A HANDBOOK ON WILLS

A. H. COSWAY

Stephenson

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A HANDBOOK ON WILLS

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A HANDBOOK ON WILLS

GIVING PARTICULARS OF HOW TO MAKE AND PROVE A WILL, AND DEALING WITH INTESTACY, ETC.

BY

A. H. COSWAY

AUTHOR OF "THE CONVEYANCERS' NOTEBOOK,"
"DEVOLUTION OF SETTLED LAND," AND
"A PRACTICAL GUIDE TO THE LAND CHARGES ACT, 1925"

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PREFACE

THERE is no document so important—at times so tragically important—as a will. An Act of Parliament may be badly drawn and may lead to unexpected mischief, but an amending Act can soon be passed. A deed may be incorrectly drawn, but it is generally drawn in pursuance of a preliminary contract, and if there is an obvious mistake in the deed it can be rectified by the consent of all parties; indeed, if one party seeks to take advantage of a manifest error, the other party can, if it is a matter of sufficient moment, apply to the court and obtain an order for rectification. In the case of a will, however, a mistake or an omission to observe some simple formality is often disastrous. In the first case, the author is gone, and his wishes may be upset and thwarted; and, in the other case, the Probate Court is governed by rules which are as the laws of the Medes and Persians, and cannot be departed from.

There is also a tendency in the case of wills to defer the making of them until the death knell is about to be rung. With some, there seems to exist the idea that the making of a will is the

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precursor to death. Nothing can be more stupid. The writer was once concerned in proving a will which had been in existence for nearly fifty years ; and when it is remembered that a person cannot make a will before attaining 21, it cannot be said that in that case it led to a premature death !

The making of a will is the most solemn, and yet the most important, act a man can accomplish ; it should, therefore, be done whilst he is in possession of all his faculties. The will can be re-made if occasion desires, but there is a sense of duty done so soon as it has been signed.

There can be scarcely a household in this land where at least one member of the family has not at some time or other been more or less intimately interested under a will, and there are very few people living who have not at times discussed wills and their nature and effect.

It is desired in the following pages to give, first of all, a short historical account of wills or " testaments " as they are sometimes called ; then to show the desirability of making a will as it may affect you ; how you can make it ; your position under any other will in which you may be interested ; and, finally, what becomes of wills after the testator's death ; or, in other words, how his wishes are consummated.

The recent legislation of this country, which

came into operation on the 1st January, 1926, made very drastic alterations in the way a man's estate is to be divided if he leaves no will—or "dies intestate," as is the legal way of expressing the position. In these circumstances, not only those who contemplate making a will, but all those who have already made a will, should consider the position, as larger powers have also been conferred on trustees, and it may well be some testators would wish to curtail these powers.

The subject of wills is of such a universal nature that it is hoped the language employed throughout this book is such as can be easily understood by the layman, and special stress is laid on such parts as are of vital importance to a person who may desire to draw his own will.

A. H. COSWAY.

Newton Abbot,
Devon.

CONTENTS

CHAP.		PAGE
	PREFACE	v
I.	THE HISTORY OF WILLS . . .	1
II.	WHY YOU SHOULD MAKE A WILL . .	11
III.	PART I: HOW TO MAKE YOUR WILL .	22
	PART II: TECHNICALITIES . . .	38
IV.	HOW TO PROVE A WILL, AND DUTIES OF EXECUTOR	53
V.	OTHER TESTAMENTARY DOCUMENTS .	85
VI.	IMPORTANT REMINDERS . . .	90
	APPENDIX: THE LORD CHANCELLOR'S STATUTORY WILL FORMS . . .	93
	INDEX	109

A HANDBOOK ON WILLS

CHAPTER I

THE HISTORY OF WILLS

PERHAPS the best definition of a will is the purport of a description given by the old Roman lawyers : " A solemn testimony of a man's intentions regarding the disposition of his goods after his death." It is impossible to state with any degree of certainty when wills were first instituted. Amongst early writers on the subject, we find two instances put forward from the Book of Genesis as evidence of the then existence of wills. The first is that of Abraham, in the 15th Chapter, where he says that unless he had some child of his body, his steward Eliezer of Damascus would be his heir ; and the second is the account given in the 48th Chapter, where Jacob bequeathes to his son Joseph a portion of his inheritance above that of his brother.

But neither of these instances, to my mind, in any way conclusively proves the existence of wills.

The first instance seems to me rather to point to the contrary, because the word "heir" in the strict legal sense does not mean a person who derives property under a will, but one who inherits it by descent. Again, I fancy the lamentation of Abraham (if such it was) that his steward would become his heir, suggests that he had no power to deal with the property otherwise. The second instance—that of Jacob and Joseph—can hardly be more than a pious wish, as it was several hundred years afterwards when it was accomplished: it may have been a prophecy, or a coincidence if you prefer that word, that one of his descendants did, in fact, acquire a double portion when the land was divided amongst the tribes of Israel. It can scarcely be said that it was derived from Jacob—seeing through what trials and difficulties possession was obtained.

There is a somewhat similar allusion to the first in the Parable of the Vineyard, where the master of the vineyard sent his son to the husbandman, and they said: "This is the heir; come, let us kill him and the inheritance shall be ours." This does not favour the idea of a will, but rather suggests that in those days possession was not merely "nine parts of the law," as we sometimes say, but all the law.

The fact, however, that we find the following

verses in the Epistle to the Hebrews shows that the nature and effect of a will was understood by St. Paul. He wrote: "For where a testament is, there must also of necessity be the death of the testator; for a testament is of force after men are dead; otherwise it is of no strength at all while the testator is living."

In the days of the Patriarchs, however, the existence of a will would have been a far different matter from what it is to-day, for the life then lived was of a nomadic character; they dwelt in tents, whilst their herds and cattle depastured the immediate neighbourhood, after which they and all their flocks moved on to pastures new. They very probably did not attach any particular importance to any special plot of "immovable" property to which they needed to prove a title by will.

Coming to the consideration of the matter of wills as regards our own country, here again we are in the dark as to when they were first instituted, or of their nature: in the familiar legal phrase, as regards personal property, they are stated to have been in existence "from time immemorial."

According to one old writer, however, the power of disposing of personal estate by a man did not extend to the whole of his estate, unless he died

without either wife or issue (i.e. children or grandchildren). By the Common Law as it stood in the reign of Henry II (1154–1189), a man's goods were divided into three equal parts, one of which went to his heirs or lineal descendants, another to his wife, and the third part only was at his own disposal. If a man died without a wife, he might have disposed of one moiety, or half part, and the other moiety went to his issue ; and, on the other hand, if he had a wife and no issue, a moiety went to his wife and he could dispose of the other moiety. The shares of the wife and issue were called their "reasonable parts," and they had the means of recovering such parts from the executors.

It is not by any means certain whether this custom prevailed all over the country, or whether it was confined to various parts, such as the City of London, the Province of York, and the Principality of Wales.

This restraint against the full and free alienation or disposing of personal property by will was gradually released, but it seems to have remained in existence longer in the places above mentioned.

In these very early times it was considered essential that where there was a will there must be an executor, for, as another old writer states

the case: "The naming or appointment of an executor is said to be the foundation, the substance, the head, and is, indeed, the formal clause of the testament, without which the will is no proper testament, and by which only a will is made a testament." The omission of an executor has, however, long since ceased to invalidate a will, though, of course, it is an important part of a will. If none is appointed, however, administration with the will annexed can be obtained by other persons as will be explained later on.

It seems, according to many writers, that land was also the subject of wills before the Conquest; but then, on the introduction of the feudal system of tenure, people were by law restrained from disposing of land by will, at all events without the consent of the lord of the manor from whom they were holding the land.

For a time in Henry VIII's reign a custom prevailed of a man conveying property to another to "such uses as he should appoint," and then by his will declaring the use in favour of the person to whom he wished to leave the land, when the trustee would have to convey it to such person.

The first direct statute permitting wills of land was that passed in the thirty-second year of the reign of Henry VIII. It was then enacted that

all persons being "seised in fee simple" (i.e. absolute owners)—except femes covert (i.e. married women), infants, idiots, and persons of "non-sane" memory—might by will devise two-thirds of their land held in chivalry and the whole of that held in socage. Chivalry and socage were different forms of tenure under the feudal system, a full explanation of which would be too lengthy and probably uninteresting to many.

In the time of Charles II, "chivalry tenure" was abolished, so from that time all land could be disposed of by will.

After the passing of the "Statute of Wills" in Henry VIII's time, however, many frauds were introduced, for notes in the handwriting of other people became valid wills if a testator "published" them (i.e. if he produced the notes and declared it to be his will in the presence of witnesses. Publication was the only formality required by the Statute of Wills in the case of personal property, and the statute had omitted to prescribe any further formality with regard to the wills of real property, except that it should be in writing.

In the reign of Charles II the statute known as "The Statute of Frauds" was passed, and it provided that wills must be signed by the testator in the presence of three or four witnesses.

Now another curious position arose, and continued until remedied by a statute passed in King George II's time. It was a frequent custom then, and it is sometimes done now, for a testator to charge the payment of his debts on his freehold property. Then it was thought if a man owed a debt to anyone it would be to his interest to get him to make a will with such a clause. This brought into question the suitability of the witness, or rather the disinterestedness of the witness ; and so strong was the view held, that if it were proved that a servant to whom wages were due, a doctor whose bill had not been paid, or even a parson to whom tithes were owing, had been a witness (and these were the most accessible persons), the whole will might be set aside as void. It can be well imagined what havoc this played on titles to property traced through wills.

There was another striking difference in wills down to 1838. Up to that time, a will would operate to give a title only to property which the testator had when he made his will ; now, of course, it deals with all he has at the time of his death.

In this country the wills relating to personal property were not of such moment, say, a few centuries ago, as they are now. There were no banks then in which money was deposited and

where the will had to be exhibited to get it, nor were there any trading companies in which people invested their money. It was more a matter of sharing out in the family.

Down to the year 1838 a boy of 14 and a girl of 12 had power to make a will of personalty.

In 1837 the "Wills Act" was passed, which, for the most part, remains in force still. It commenced to be operative on the 1st January, 1838, and the solemnities then provided for the signature of wills are still operative, and this I propose to deal with very fully and distinctly in Chapter III.

Those of us who have been accustomed to meet with old wills must have been struck with the fact that, almost simultaneously with the passing of this "Wills Act," the old style of commencing the will died out. Compare such a commencement with the present. About a century or more ago, the recognized opening was in this style: "In the name of God Amen. I John Brown of etc. being frail in body but of a sound and disposing mind thanks be to God for the same do make publish and ordain this my last Will and Testament in manner following that is to say First I commend my soul to God and my body to the earth from which it was taken in full assurance of a joyful resurrection through the merits of Jesus Christ my Saviour." Then the

business part would be ushered in with the word "Item." Far different this from the usual custom now: "This is the Will of me." Whether the old style was because the probate of wills was then under the jurisdiction of the Church—i.e. the Prerogative Court of the Archbishop of Canterbury, the court of either of the other bishops or the "Archidiaconal" court—or whether it was that the lawyer would be able to charge for these extra words, it is difficult to say, but there is certainly a "richness" attached to the full and clear language then used from what we frequently find to-day.

Ever since the statutes have provided the solemnity of signing the will in the presence of witnesses, a similar solemnity has been attached to the revocation of a will, "for to hold to the contrary," Lord Bacon said, "would be to deprive a man of that which above all things is most incident to human condition—and that is alteration or repentance." It was in former days also held that a will should be revoked (besides the usual method of "burning, cancelling, tearing or obliterating it") "by any modification of the interest of the testator or by such a great and entire alteration in circumstances as arose from marriage and the birth of a child." In reference to the latter statement, an old writer observed

that that kind of revocation was analogous to the Roman rule which set aside a will if any child was wholly passed by therein without a good and sufficient reason being assigned therefor, and it is thought that it is to this very rule the tradition arose that it was necessary to leave the heir one shilling or some such small sum in order to cut him out effectually. In some quarters, I believe, this is still believed in.

Before 1838 there was also a different rule as to signing; it was considered sufficient if the testator signed in the body of the will instead of at the end (i.e. "I 'John Brown' do make this my last Will, etc.")

By the Law of Property Act, 1925, further provisions and enlargements of testamentary powers were made, which will be dealt with in the proper place.

CHAPTER II

WHY YOU SHOULD MAKE YOUR WILL

It cannot be too strongly urged that a will should be the free and spontaneous wish of the testator. That is a matter which is impressed upon solicitors when they commence their practice, namely, that it is not their duty to " make " their clients' wills, but to assist them in so doing. It is not their province to tell a testator what he must do, but to ask him what he wishes to do, and then to do that which he wishes (if it can be legally accomplished) in the best possible way.

Personally, I think it is far better for a testator either to make his own will or to set down in writing what he wishes to do. It would no doubt often save trouble thereafter if the testator got someone to read through his will and see if that person understood it in the way he intended. Whenever a person has a will made for him, he should be sure he understands the purport of every word in it.

The most common error (besides an imperfectly signed will) is, I think, the attempt to make an absolute gift and then to add some condition which qualifies the enjoyment of that gift. In

the next chapter this matter will be dealt with and suggestions made how certain objects can be achieved in a way recognized by the law.

All reasonably minded men and women who have been blessed with this world's goods, or have, often at some pains, been able to " put by a bit," as it is familiarly expressed, must feel it their duty to make some provision for the distribution or enjoyment of their property after their death. Particularly should this be the case with a married man who has a wife with or without children.

The making of a will is a thing above all things which should not be deferred, but once a man has made up his mind as to what his wishes really are, he should lose no time in putting the same in writing and to see that it is done in such a manner that it will be accepted by the Probate Court, full particulars as to which will be given in the next chapter.

The object now is to show you what will happen to your goods if you make no will.

Very considerable changes were made in the manner in which the property of an intestate (i.e. a person who dies without a will) is to be distributed by the Administration of Estates Act of 1925, which came into force on the 1st January, 1926. Probably the most far-reaching, which,

if not heeded, may work the greatest havoc, is the rule that real and personal property are to be treated on the same basis. By real property, you may know, is meant freehold houses and land.

Everybody probably knows that it was the custom for such property to descend to the eldest son as heir. In most cases this was subject to the widow's dower (i.e. an interest in a third share during her life). This is no longer the case, but the property will now be divided in the same way as cash and other personal property.

The position of the widow of an intestate has been considerably altered. Until the beginning of 1926, if there were any children of the marriage, besides her dower as above, she took a third share of the personal property absolutely. To make this clear, let us suppose the husband left a freehold house, which produced a net income of £30 a year, and £600 worth of other property. The widow would have been entitled to £10 a year of the rent during her life and £200 cash, with which she could do what she wished. On her death, the house would belong absolutely to the eldest son. If there were no children of the marriage, and the total estate did not exceed £500, the widow took the lot. If more than £500, she took that as a first charge, and then shared in the rest in certain portions,

which—as the position has now been altered—need not here be stated in detail.

I will now set out the effect of an intestacy under four classes, one of which must affect you, and you may please give that your special attention.

CLASS I

Intestate dying, leaving a widow with or without children, and estate not exceeding £1,000

In this case the widow takes all. It may be stated here that in *all* cases the widow will be entitled to £1,000, with interest at 5 per cent from the date of the death, and all the personal chattels which are thus defined in the Act—

> Carriages, horses, stable furniture, and effects (not used for business purposes), motor-cars and accessories (not used for business purposes), garden effects, domestic animals, plate, plated articles, linen, china, glass, books, prints, furniture, jewellery, articles of household or personal use or ornament, musical and scientific instruments and apparatus, wines, liquors, and consumable stores, but do not include any chattels used at the death of the intestate for business purposes, nor money, or securities for money.

I want to make a few observations here. I know many who read so far will say: "Well, I don't think I shall ever have more than £1,000 besides such articles, and I want my wife to have all my property, so I don't want to make a will."

It is quite true your wife would get it all, but if you have some money, say, in the Post Office Savings Bank or any other bank, or in War Loan, or any shares in companies, or you possess the house in which you live, your wife will not be able to go to the Post Office with a death certificate and say: "My husband is dead, and I want to draw out some money." In the absence of a will, she will be asked to get out "Letters of Administration" to evidence her title to all this property.

You see she will have to go through the same process as if you had left a will, *with this additional bother*. Before letters of administration will be granted by the Probate Court, she will have to find two persons to become "bondsmen" or "sureties" for her. These will be required to sign jointly with her a bond in double the amount of the property you have left as a safeguard against your wife not properly administering your estate, by paying all your just debts and putting the rest in her own pocket, so to speak. Now it is not always convenient to have to ask people to take this responsibility for which they can get nothing. Say your estate was valued at £700, a good many people you know would not like to have to sign a bond under which they could be called on to pay up to £1,400 if

your wife went astray—though in the case we are considering, provided the debts are paid, it is impossible to see how they could be liable. The same process is adopted, however, as if all your money had to be paid to a stranger and your wife was the distributor. I will, however, confess that I have never met a single case in thirty-five years' experience where a bondsman has been called on under his bond.

I think, however, you will agree with me it will be much simpler to leave a will, when you see from the next chapter how easily it can be done, if you merely wish to leave everything to your wife.

CLASS II

Intestate dying, leaving a widow and children, and estate over £1,000

After your widow has taken her £1,000 and interest, and the above articles, the position will be that she will be also entitled to have half of the rest of your estate for her life, and the other half will be equally divided between the children, and on your widow's death the first half will be similarly divided. If any of your children have died in your lifetime leaving children, such children will be entitled to take between them the share their parent would have taken. Again, if you have paid out any sum to either child to "set

him up" in life, he will have to give credit for this sum before sharing with the others. This may be in accordance with your wish. Here, again, your wife would be entitled to take out administration with two bondsmen as before. Two of the children could be bondsmen if they have attained 21.

But in many cases I can foresee hardship if people do not grasp the altered mode of distribution. Suppose you are a tradesman, or, better still, for the purpose of illustration, a farmer, and you have been able to acquire your farm. Your eldest son has remained at home and for many years may have been the chief factor in the business, or practically run the farm for you. The other children have gone out into the world and secured their fortunes. You died without a will. Your property, consisting almost entirely of your business assets or your farm, is valued at £5,000. Your wife calls for her £1,000 and takes all the "articles" to which she is entitled. She also wants the £2,000 (half of the residue) invested in some Government security, and calls for the money to be so invested, which she would have the right to do. You have three younger children calling for their share, £500 each during the widow's life, with a further £500 each on her death. Do you not see how it

would be possible that the eldest son, who, under the old law, would have inherited the farm, may be ruined in the absence of a will. He could be called on to raise £4,500 soon after your death, and be bereft of all the furniture. He might be left with the business utensils by paying the greatest part of their value, but how could he carry on ?

There may be a similar state of affairs in your own case, of which you alone can judge now.

Is there need for a will ?

CLASS III

Intestate dying, leaving a wife but no children, with an estate over £1,000 in value

The point which requires to be particularly noticed here is that, although the widow takes her £1,000 and the " articles," even if you are a millionaire, she will get only a life interest in the rest of your estate should you leave even a step-aunt who survived you for five minutes. Your widow would not be able to dispose of any of the property except any of the income she had saved, but on her death, if the step-aunt had made a will, all would pass under her will. I have not mentioned " step-aunt " because she is the nearest relative, but to show how distant a relative comes before a widow, or a widower for the matter of

that, in the new mode of distribution. The precise order in which the relatives will take is as set out in the next and final class.

Would you prefer your wife to be able to enjoy your capital before your father or mother, brother or sister, uncle or aunt, or nephew or niece? If so, make a will.

CLASS IV

Intestate dying a bachelor, a spinster, a widow or a widower (without children)

I think this class is wide enough to sweep in all not included in the other three classes. This is the order in which people will be entitled to take your property—

1. Your father and mother equally; or, if one only living, that one.

2. Your brothers and sisters equally (if any have died leaving children, the children will take the share they would have taken).

3. Your half-brothers and half-sisters equally (if any have died, their children may take their share between them).

4. Your grandparents equally; if only one living, that one.

5. Your uncles and aunts equally (same provision in respect of any dead leaving children).

6. Your step-uncles and step-aunts equally (with a similar provision if any die leaving children).

If, however, you should leave no relatives answering to any of the above descriptions, then your property will revert to the Crown, or to the Duchy of Lancaster or to the Duchy of Cornwall, though in all probability, on representation, more distant relatives would be provided for.

Assuming you are satisfied with the above, I can say no more; but if you prefer any other arrangements, you should set about making your will.

In concluding this chapter, it may be mentioned that there are three cases in which the old law of distribution still holds good.

First, in the case of "entailed property," until the property has been "disentailed"—explained in the next chapter.

Secondly, if a testator leaves property to his "heir" or the "heir" of any other person. As the word "heir" is no longer a strictly legal definition, it will take effect under the old law.

Thirdly, in all cases where the owner of property was a lunatic on the 1st January, 1926, unless he recovers so as to be competent to make a will before his death. You see, in all cases, a person, if he does not like the new mode of distribution, can make a will to comply with his wishes; and it was considered that as a lunatic has not this advantage, the altered mode should

not affect his estate. The best evidence of his recovery would, of course, be his discharge from any asylum in which he had been placed, or the discharge of any receiver or committee appointed by the Chancery Court to look after his affairs. This word "committeē" has the accent on the last syllable, thus: com-mit-teē, and means a person to whom the case of an idiot or a lunatic is committed.

Provision is made by the 171st sect. of the Law of Property Act, 1925, for cases of hardship occasioned by alteration in the law or circumstances in the case of a lunatic by providing that a person who would have had a *spes successionis* (i.e. a hope, or expectancy, of succession) or an interest in the property may apply to the Court. This was done in the case of *in re Freeman* (reported in *Weekly Notes*, 1927, p. 38). The circumstances were a will of a spinster leaving all to three sisters who survived her. She died later, of unsound mind, leaving two second cousins who had had charge of her as her nearest relatives. Under the new law of intestacy no more distant relative than a first cousin can take, but the Court made an Order for a Settlement to be made in favour of the two second cousins.

CHAPTER III

PART I

HOW TO MAKE YOUR WILL

THIS is the most important chapter in the book, and because of its importance it is hoped that the language employed may be understood by all. It is assumed that you have decided to make your will and that you wish to do it yourself. Any person over the age of 21 years, being of a sound mind, is entitled to make a will.

I will ask you, first of all, kindly to disabuse your mind of all you have heard about wills, and to take your instructions entirely from this chapter. There is no need to seal a will, and it does not require any stamp; nor is there any regulation as to the kind of paper on which it is written. Indeed, it might be written on a slate, but it is not advisable to adopt such a method. A sheet of note-paper will be quite satisfactory, though, of course, a sheet of foolscap would be better. As it is such an important document, it would be as well to get as thick and endurable a piece of paper as possible. Personally, I am much against the forms of will sold by the stationers, not

because they are unsuitable in any way, but because I think it is dangerous for a novice to have a partly drawn document to play with. Please do not write in pencil, as that can be so easily rubbed out; and, above all, do not try to make use of legal language unless you know exactly what is meant. If you wish to make any complicated arrangements with regard to your estate, and have the *least* doubt after reading this chapter how to set about the work, do not hesitate to consult a solicitor or someone who has had experience in such matters.

Let us assume you wish to make provisions for your wife, or husband, and for the family, by giving all to the husband or wife, or to either for life, and then to the child or children. I do not think you will experience much difficulty in this.

Methods.

There are three different ways of commencing a will, the first and oldest being "THIS IS THE LAST WILL AND TESTAMENT"; the second, and I think the best, "THIS IS THE WILL"; or the third, and most modern way, "I JOHN BROWN of 1 Hyde Park Road Bristol hereby revoke all previous wills and declare this to be my last will."

3—(6090)

Let us take the second style and have a sample of a will leaving everything to a wife—

THIS IS THE WILL of me JOHN BROWN of 1 Hyde Park Road Bristol Draper I REVOKE all previous Wills made by me I GIVE all my property to my Wife Sarah Brown and appoint her sole Executrix of this my Will

As WITNESS my hand this.....day of.....One thousand nine hundred and twenty-seven

SIGNED by the said John Brown as and for his Will in the presence of us both present at the same time and signed by us in his presence and in the presence of each other } John Brown

William Smith
3 Hyde Park Road
Bristol
Grocer

Laura Smith
His Wife

No one can say there is anything very intricate in this. You would, of course, be careful to fill in and sign your full name and the correct date. A will in the name of "John Brown" signed "John Thomas Brown" might mean delay in proving, and the necessity of an affidavit to prove the correct name and that the proper person signed.

The procedure as to the signing is the most important of all. *Be sure to sign in the presence*

of two witnesses, and let each sign in your presence and in the presence of each other, and be sure to fill in the date. Any person of intelligence will do as a witness, though under 21. It is not necessary they should know the contents of the will, but it is best to tell them it is your will which you are going to sign, as it would impress the occasion on their memory should it be necessary to refer to them after your death, which we hope would not be the case, and should not be, if you obey the above few directions, unless anyone should try and prove another will purporting to be yours or should suggest you did not know what you were signing. One word more about the witnesses. If your will is more elaborate and you are giving legacies to different persons, do not ask anyone to whom a gift is made, or the husband or wife of that person, to be a witness, or the gift will be lost. The law is very strict on this point.

After having signed the will, *do not on any account write anything further on it or make any alteration in it.* If you want to alter it, write it out again and sign it, and get it witnessed as above. You will please remember that though the will has to be signed with such strict solemnity, you are quite at liberty to revoke or destroy it at any time if you want to make fresh arrangements. Also remember that your will takes effect

immediately on your death and will deal with the property you then possess, although you may have acquired most of it after you made your will.

If you make a fresh will, *never keep the old one lying about.* If you do so, even if you should mark it "cancelled," it might, in certain circumstances, be acted on, if the new will was not found. This may seem strange, but the Wills Act, 1837, provides that a will is revoked by "burning, tearing, or otherwise destroying" it. The best plan is to put an old will in the fire as soon as the new one is signed.

Do not be led away by the familiar saying, "I will strike you out of my will," and strike out something from the will after it has been signed, because you will not thereby accomplish your wish. The witnesses would be asked to say if the alteration was there when they saw you sign; and if they say it was not, the Probate Court will restore the words you have struck out, even if they have to use a magnifying glass to find out what was written there.

If you want to cancel a legacy and do not wish to re-write the whole will, it should be done by a "codicil" (i.e. an addition to your will), which may be written on the same paper if there is room, or on a separate paper, but the same

formalities must be used as for a will. Here is a sample—

THIS IS A CODICIL to the WILL of me JOHN BROWN of 1 Hyde Park Road Bristol Draper which Will is dated the 1st January 1926 I REVOKE the legacy of Ten Pounds given by my said Will to Thomas Jones

AS WITNESS my hand this 1st day of February 1926

SIGNED by the said John Brown as a Codicil to his Will in the presence of us present at the same time and signed by us in his presence and in the presence of each other } John Brown

John Box
6 Small Street
Bristol
Gentleman

W. Rooks
4 Small Street
Bristol
Law Clerk

It need not, of course, be the same witnesses as to the will, *but all must be present at the same time,* as explained in the case of the will.

I knew a case not long ago where a layman was called in to make a will for a lady who was ill, and as there was no one else present, he got the lady to sign and signed as a witness, and then took the will to the house of a friend, who signed as the other witness. Now it is probable if the will had been properly drawn, nothing more

would have been heard of this, but instead of the clause as above showing they had signed together, the word "witnesses" only was put. To satisfy the Probate Court, an affidavit would have been necessary to show they all signed together, but as neither of the witnesses could make this, the will was useless. Fortunately, it was a case where there was a husband and no children, so the husband took all on the intestacy as he was intended to do under the will.

We will now consider you are a married man with a wife and, say, three children, and you want to provide for all. The usual course in such a case is to leave the property to the wife for life and then to be divided equally between the children. It will be advisable to have two executors : the wife could be one, but as the property is not to be divided until after her death, the wiser plan would be to have two independent executors ; but if the children have attained 21, two of them would do. Here is a sample—

THIS IS THE WILL of me JOHN BROWN of 1 Hyde Park Road Bristol Draper I appoint my Brother William Brown and my friend John Smith of 2 Hyde Park Road aforesaid Executors and Trustees of this my Will and GIVE to them all my property Upon trust for sale and after payment of all my funeral and testamentary expenses and debts to invest the residue in any investments authorized by law for the investment of trust

funds and to hold the same Upon trust to pay the income arising therefrom to my wife Mary during her life and on her death to divide the same between my three children John Henry and Mary in equal shares on their respectively attaining the age of 21 years or marrying under that age But if either of my said children shall die in my lifetime or before attaining the age of 21 years leaving a child or children who shall survive me such child or children shall take the share which their parent would have taken under this my Will and if more than one in equal shares

As Witness my hand this 1st day of January 1926

Signed by the said John Brown in the presence of us present at the same time and signed by us in his presence and in the presence of each other } J. Brown

John Box
6 Small Street
Bristol
Gentleman

Ada Box
His Wife

Now, a word as to the executors. It would be best to ask if they will be willing to act. If they are, remember it is an honorary job, so that if your estate is not very small you may think it well to leave them a small legacy for their trouble in so acting. If you decide to do so, you could insert the words in the will immediately after their appointment thus: "And I give to each

of them the sum of £..... free of duty as an acknowledgment of his trouble in so acting." The words "free of duty" are inserted because if your estate is valued at more than £1,000 they would be called on to pay legacy duty, the brother at 5 per cent and the friend at 10 per cent, and I do not suppose you would wish this, but would prefer your estate to pay this.

There is another, and shorter, way of wording the above will if you have no house or landed property—

THIS IS THE WILL of me John Brown of 1 Hyde Park Road Bristol Draper I appoint my Brother William Brown and my friend John Smith of 2 Hyde Park Road aforesaid Executors and Trustees of this my Will and I give to each of them the sum of £..... as an acknowledgment of his trouble in so acting I GIVE all my property unto my wife Mary Brown for her life and after her death I give the same unto and equally between my three children John Henry and Mary If either of my children shall die in my lifetime or under the age of 21 leaving a child or children who shall survive me such child or children shall take (and if more than one in equal shares) the share which his her or their parent would have taken under this my Will

AS WITNESS my hand this 1st day of January 1926

(This must, of course, be signed exactly as before, with the same clause added as to the witnesses.)

It may seem to you that the second is the

simpler form, and so it is, but it will lead to more complications if you have any house or land. If you have a house or any land, and use this simpler form, your wife will be called a "tenant for life," and your will must take effect under the Settled Land Act. I will try and explain simply what this means. When your executors have proved the will, they will have to sign a document called a "Vesting Assent" in favour of your wife, and on her death they would have to take out a further "Probate" or "Letters of Administration" dealing with the landed property, and then have to sign a further "Vesting Assent" in favour of your children.

I think this last paragraph will be enough to show you the other form may be the better. You must express that the land, or property, is given to the trustees "upon trust for sale" in the way I have done, but this does not mean that the trustees *must* sell, because the law has given them power to "postpone" the sale as long as they think fit. You can also, if you wish, interpose the words, "with the consent in writing of my wife" after the word "trust" as an additional safeguard, if you so desire. Then the clause would read: "I give to my trustees all my property upon trust with the consent in writing of my wife to sell," etc. There would

then be no need to sell unless it was necessary to do so to pay your debts. The trustees could allow your wife to collect the rents, and pay all the outgoings and retain the rest if they liked, or if you own the house in which you live, they would allow her to remain there rent free on her paying for repairs, insurance, and the rates and taxes, and on her death nothing would have to be done except to sell then, if necessary, and divide the money ; or it might be arranged that one of the children should take the house as a part of his share if there was sufficient funds for the other shares, or the one taking could pay sufficient to equalize the other shares.

The above forms are equally appropriate for a married woman who may wish to give her property to her husband, or to settle it on him and the children.

If you are a single person, I should remind you here that if you marry it will act as a cancellation of your will. Under the new Act, which came into operation on the 1st January, 1926, however, you can, if you like, make a will in contemplation of marriage which the marriage will not revoke. Here is a sample—

THIS IS THE WILL of me John Brown of 1 Hyde Park Road Bristol Draper which I make in contemplation of my marriage with Mary Smith of 25 Small Street Bristol

I give all my property to the said Mary Smith and appoint her sole Executrix hereof AND I declare that this Will shall not take effect if the said marriage is not solemnized within six months from the date hereof

AS WITNESS my hand this 1st day of January 1926

Signed, etc. (*copy as in the previous forms*) } J. Brown

Now, with regard to the last form, I want you to distinctly understand that, although the subsequent marriage will not revoke it, the testator is not bound by the will after marriage, but he can alter or revoke his arrangements as he wishes.

If you are leaving all your property to a person somewhat advanced in years, it may be as well to provide for that person dying in your lifetime, because in such a case the legacy would lapse. This can be easily done thus: "I give all my property to my sister Mary but in case she shall die in my lifetime I give the same to my cousin Jane." I think it is always advisable when giving the property to one person to appoint that person executor or executrix, as the case may be. You will understand that "executor" is the word for a man and "executrix" the word for a woman.

It may be that you are asked to make a will for a blind man or for someone who through some infirmity is unable to write. In such a case, and, indeed, in all cases where you undertake to make

another person's will, be sure it *is* the will of that person. *Never take your instructions from a third person.* When the testator is unable to read or write, the will should be carefully read over to him, and care taken that he perfectly understands it and that it is in accordance with his wishes. The signature to such a will must be obtained and witnessed as shown here—

Signed by the Testator by his making his mark in the presence of us both present at the same time and signed by us in his presence and in the presence of each other the Will having been first read over to the Testator and he appearing to perfectly understand the same

The mark of
X
John Brown

John Box
High Street
Blanktown
Schoolmaster

Ada Box
His Wife

Special Case.

I want to give just one further sample of a will, because there are one or two observations I wish to make on it.

THIS IS THE WILL of me James Cox of 2 East Street Blankham Builder I APPOINT my Brother William Cox and Thomas Row of 4 East Street aforesaid Executors

and Trustees hereof and I give to each of them the sum of £10 as an acknowledgment for his trouble in so acting I DEVISE to my said Brother William the house in which I now reside and all my plant and stock in trade as a Builder I DEVISE to my Nephew James Cox my freehold premises known as No 6 East Street aforesaid I BEQUEATH the following legacies: To each of my sisters Sarah Jane and Elizabeth the sum of £100 free of duty And I also give to them all my household furniture and effects and articles of personal use or ornament in equal shares And I declare that if my said sisters shall be unable to agree as to the division of the same the decision of my Trustees shall be final and binding on all parties I give the residue of my Estate unto my Brother John absolutely

As WITNESS my hand this 1st day of January 1926

(This, of course, should be signed as shown before by the testator and two witnesses.)

Now, we will suppose that a year after making this will James Cox moves his business to another part of the town and goes there to live. A month before his death he signs an agreement by which he agrees to sell No. 6 East Street, but he dies before the sale is actually completed. What is the result if he makes no alteration in his will? William gets the business, but not the house in which James lives at the time of his death. As that house has not been specifically given to anyone, it will go to John as part of the residue. The nephew James also loses his house, because by law the agreement to sell has "converted" that

real property into personalty; nor will he get the purchase money, for that will also go to John as part of the residue.

Common Errors.

I will now refer to the common errors which, as I mentioned in the last chapter, testators frequently make in their wills. We sometimes meet with such a clause as this: "I give to my daughter Mary all my property but if she shall marry I give it to my nephew James." That is not legal. Under such a will, Mary would take the property absolutely, because the condition against marriage should not be attached to the gift. At the same time, the object could have been accomplished in another way. The testator could give his property to his trustees upon trust for his daughter Mary until her marriage, and then in trust for his nephew James. This would be quite in order, but Mary would be entitled only to the income. If the estate was a small one and the testator would like her to enjoy some of the capital, and yet achieve his purpose, he could do it by adding such a clause as this: "I empower my trustees to advance to my said daughter any sum from time to time not exceeding £..... provided she shall be unmarried."

Another very common error which creates a

difficulty is when a testator gives his property to his widow and adds a clause that after her death it shall be divided amongst his children. This is not clear. Does the testator wish his wife to have the income only, or is she to have the whole ; or does he merely mean that, if his wife does not use all the money, it is to go to the children ? Probably the latter would be the real intention, but you cannot well give a person property and take it away at the same time ; and if it is to be considered an absolute gift, the wife could legally do as she wished with the property. The testator's wish could be best accomplished by giving the property to trustees upon trust for his wife for her life and then for his children—in fact, Form 2 on pages 28–29 would meet the case. If, however, the estate is small, so that the testator feels the income alone would be insufficient for his widow, he could add such a clause as this : " I empower my trustees at the request of my said wife at any time or times to advance to her any sum or sums of the capital money which she may require for her own benefit." In this way the wife would not be stinted, and there might be some residue left over for the children.

PART II

TECHNICALITIES

UNLESS you wish to be further "steeped" in legal knowledge about wills, you may pass over the rest of this chapter, but, for the sake of those who, like Oliver Twist, are asking for more, there are one or two further matters which may interest you.

Lapse.

I mentioned just now that when a legatee dies in the lifetime of the testator, the legacy lapsed. There is an exception to this rule, however. Where a legacy is left to a child of the testator *by name, and not as a class*, and such child dies in the testator's lifetime leaving a child or children who survive the testator, that legacy does not lapse. Please note the distinction between leaving "by name" and not "as a class." If I leave my property to my child or all my children without stating the name of such child or children, that is a gift to a class, and even if I should have but one child, and that child predeceased me, the legacy would lapse, even if my child left issue. If, on the other hand, I leave my property to my children John, William, and Mary, if either of these die in my lifetime and leave a child or

children surviving me, the legacy will not lapse. Many people know this much, and from it infer that, therefore, the children of the deceased child (i.e. the testator's grandchildren) will take the share between them. This is not the case. The same Section (Section 33 of the Wills Act, 1837) which provides against the lapse does not substitute the children of a deceased child for that child, but goes on to say that the legacy shall take effect "*as if the child had died immediately after the testator.*" Curious results may, therefore, happen. I will give an instance of what could occur. If I made a will leaving my property to my son by name and he died before me, leaving a child, but having by his will given all his property to his wife, she would take the legacy given by me. You can go further than this: Suppose my son's widow had married some person whom I might never see and left all her property to this second husband, and she herself had died before me.

In such a case, the legacy I had intended for my son, and would not have minded going to my grandson or granddaughter, will never reach the latter, but the legacy would pass under my will to my son's estate, pass under his will to his one-time wife, and through her will to the second husband. This, then, is the object for providing

in a will how the property is to go if a child predeceases the testator.

In the case we have been considering, if the grandchildren are not expressly provided for by the will, it would have been better for them if there had been no will, because under the law they would take their parent's share as representing him.

Powers of Advancement to Infants.

When trustees under a will are holding personal property in trust for a child who is under the age of 21 years, they have power to apply the whole or any part of the income of such property for or towards the maintenance, benefit, or education of that infant. If any of your children should thus be entitled, the trustees have this power, but you must not imagine they are bound, or that it is their duty, to maintain your children for you. It is their duty to ascertain whether there is any other fund available and whether any person is bound by law to provide for that infant, and generally they must have regard to all the circumstances of the case and not make any lavish advances which might benefit the parent as well as the child. If a child of yours should be interested in a legacy of some size, and you are in humble circumstances, you might ask

the trustees to provide for the education of that child, or for an advance to set him out in life. The trustees have had such a power since 1881, but the statute has now been re-enacted giving this power.

For the first time in history, the Act of 1925 also gives the trustees statutory power to make advances of capital up to any sum not exceeding half of the child's interest. This can be done even if the legacy is what the lawyers call "contingent" (i.e. if it is only to be paid on his attaining 21). If, however, anybody is enjoying the income of the money before it is to go to the child, the consent of such person must be obtained before any such advance is made. This is reasonable, for such person would lose the income of the portion so advanced.

If you have made your will and do not want your trustees to make any advances of capital for any infant, you must provide against this, and you could do so thus: "I desire that my trustees shall not in the exercise of any statutory power raise or apply any portion of the capital of my estate for any minor under this my will."

The same statute which provides for the advancement of capital also provides, and rightly so, that on the final division of the trust money any child

who has received the benefit shall give credit for the sums advanced. This is what the lawyers term "bringing into hotchpot," and has been known to be a source of worry to a poor mathematician. I have known a case where there was a final sum of £3,000 for division amongst three, one of whom had had an advance of £600, and the "accountant" divided the £3,000 by three and took off the £600 from the one who had had the advance, crediting him with £400! It does not require much skill to see that the £600 should first be added to the £3,000 and then divided, giving two £1,200 each and the other his balance of £600.

Entailed Estates.

Most of you have probably heard of property being "tied up" so that it will descend from father to son in a regular line of succession. This is when it has been settled on someone for life and then for a son "in tail male," as it is generally expressed. It has always been possible for the son after the father's death, or in his lifetime, with his consent, to "disentail" the property; that is to say, he could sign a deed whereby, subject to the father's interest in the income if he was living, he would become the absolute owner of the property. If no such deed was

signed, it would descend to his son (if any). This will still be the case, notwithstanding the great alteration in the law relating to property. But it has been provided that a " tenant in tail " may disentail by his will and leave the property to anyone, just as if he had previously by deed made himself the owner. To do this, he must refer to the property, or clearly show his intention that his will is to apply to the property ; it could be done by general words, such as : " I give all my property in which I have an entailed interest." As, however, no one would care to venture to dabble with this without a solicitor, it is unnecessary, and too uninteresting to a layman, to discuss further here.

The Lord Chancellor's Will Forms.

Another very novel innovation is that people may make wills to a large extent by reference to certain stereotyped forms, which have been framed by the Lord Chancellor and which will be always construed in the same way. These forms are set out in full at the end of this book, and I will just give a few comments in case anyone should care to use these forms, or may be interested in a will which contains a reference to " Form No. so-and-so of the Statutory Will Forms, 1925," as may be commonly the case hereafter.

I am sure the Lord Chancellor would be the last to claim any originality for the language of the forms, because they are, for the most part, clauses which were in common use in will forms before the Lord Chancellor was born—forms which are well understood in the Courts.

It is contemplated that some testators may like to have the benefit of these forms without having the labour of copying them out in their wills. In such a case they may at the end of the gifts made by them add: "I desire that the forms contained in Part I of the Statutory Will Forms, 1925, may, so far as practicable, be incorporated herein"; or if any Form in Part II is appropriate after the particular legacy or provision in the will to which it relates, the testator may add: "Form ..... of the Statutory Will Forms, 1925, is incorporated in this my will." It will be necessary to show to which legacy any particular form is to relate.

I know there is great prejudice in some quarters against the incorporation of clauses in wills by reference to another document; but seeing these forms have been prepared in pursuance of a direct authority, it is certain they will be greatly used, and people in the profession will get to know them by their number.

Form No. 1. This is clearly not an essential

form, but may in some cases be added by way of additional safety, or, *ex abundanti cautela*, as the lawyers say. This is the meaning: In marriage settlements, where property has been given to the husband and wife for their lives, a clause is usually added that the husband and wife and the survivor are to have power by deed or will to appoint the property to the children in such shares as they think best, and that in default of such appointment the property is to be divided equally. The object of this clause is that, whilst the parents themselves cannot touch the capital, they may control its enjoyment by the children and cut out any who may have become otherwise entitled to a fortune, or are undeserving, and it also enables the parents, when a child is being married, to make a definite appointment of a share to such child, which the child can settle on marriage. Well, the idea of Form 1 is to infer that the parent has no wish to alter the settlement in any way.

Form No. 2. We are already familiar with this language as being the "articles" which a widow will take in the event of an intestacy. If by your will you leave your "personal articles" to any person, this is what they may take if you incorporate the Form No. 2.

Form No. 3. This is a long form, which is

self-explanatory. However, many testators do not care to impose all this trouble on their executors, and, in practice, we often find in wills following a gift of furniture, etc., to anyone for life: "I declare that my trustees may permit the legatee to have the use and enjoyment of such articles without being liable to see to the preservation thereof or being responsible for any loss or damage which may happen thereto."

Form No. 4. This is a clause which is often inserted, but not strictly necessary, as it seems apparent that the treasurer of a charity would be the obvious person to whom payment should be made.

Form No. 5. This contains useful provisions, but I think the bulk of them, if not the lot, are expressly provided for by law.

Form No. 6. The Administration of Estates Act, 1925, gives personal representatives (i.e. executors and administrators) power to appropriate separate portions of the deceased's estate, and allocate to the various legatees so as to obviate the sale of everything and division of the cash, but it is provided that the consent of the persons interested are to be obtained to such allocation. The object of Form 6 is to empower the executors to make such a division without the consents, but the usefulness is rather hampered

by the necessity of having to give a month's notice of the intention, which may tend to retard the speedy division.

Form No. 7. In this form we have a fair sample of the verbosity of legal language, which is so perplexing to the layman. Put more simply, the meaning of the clause is that the legacy is a settled one, and that the trustees have the choice of investments for it so long as they keep within the range allowed by law for trust funds. They have to pay the income to the legatee for life, and after his or her death divide the capital among the children or descendants of children attaining 21 in such manner and shares as the legatee may have appointed by deed or will ; or, if the legatee does not make any arrangement, the division is to be equally, except that grandchildren would only take between them the share of their deceased parent, and it is also provided that, unless any appointment made by the legatee gives a contrary instruction or direction, anyone benefiting by such appointment must give credit for the sum received to ensure an equal division, and if there are no issue of the legatee the legacy is to form part of the residuary estate. There is a further power for the legatee to give his or her wife or husband (as the case may be) the benefit of the income for life.

Form No. 8. This is practically the fixed law on the subject.

Forms Nos. 9 *and* 10. There is very little difference in these two clauses, but the difference will be noted in the next paragraph. It is provided in each case that the income is to be paid to the surviving spouse for his or her life, and then the fund is (subject to the variation mentioned in the next paragraph) to be divided between the children of the marriage on their respectively attaining the age of 21 years. If any of the children die under that age leaving children, then such last-mentioned children are to take their deceased parent's share between them in equal shares.

Powers.

The difference referred to is that, by the adoption of Clause 9, the surviving spouse is given the benefit of a power of appointment over the fund. The object of this power is principally of a twofold usefulness.

Firstly, there are often cases where one child is much more fortunate in life than another, and may, therefore, not need help to the same extent as the other, and in such a case the power of appointment enables the surviving spouse (who is called, in legal phraseology, the " donee of the

power ") to appoint a larger share to the most needy of the children.

Secondly, there are, in many families, children of a more prodigal nature than the others, and it may be that if their inheritance was assured to them they would sell it " for a mess of pottage," either by a sale outright at a gross undervalue or by mortgaging at an exorbitant rate of interest, and possibly in consequence having to put up with a forced sale. In this second case the power of appointment will mean that such beneficiary could not give security, as during his or her parent's life he or she would not be sure of any share. Thus the parent may hold a restraining hand over the child.

It will be noticed that the last three clauses refer to property disposed of " otherwise than in exercise of a special power." There is a difference between a " special " and a " general " power. If property is held by a person in trust for the children of another person in such shares as he may appoint, that is a " special " power, as the appointment could only be made to a child ; it is also called a " limited " power, as it cannot be exercised in favour of an outsider. But a " general " power is practically equivalent to absolute ownership. If trustees are holding property in trust for such persons as I may by deed or will

appoint, there is nothing to hinder me from signing a deed appointing it to myself and asking the trustees to hand over the property. If the words " Deed or " were omitted, I could appoint the property only by my will, in which case I could not touch the capital during my life. This was a course often adopted where it was feared the legatee was of a too prodigal disposition, because as the capital could be disposed of only by his will it was considered quite safe.

Such a provision can, however, be overcome by a little legal jugglery : it is not quite " waterproof." Let us suppose a man who has a life interest in property with an absolute power to dispose of it by will only, and he is in urgent need of cash. It can be accomplished in this way. He could make a will in favour of some person and then borrow a portion of the capital from that person. It is true that a will is in its nature revocable, but if the borrower in his mortgage deed effecting the transaction entered into a covenant not to revoke the will so far as it related to the appointment made, the covenant would be binding, and the lender would have a cause of action against the estate if the will had been revoked, and be able to recover the amount of his loan and interest.

Protective Trusts.

Another useful provision made by the recent legislation is what is called "protective trusts." You all know that the object of a settlement is to protect the capital, but in practice it is often as necessary to protect the income. We often find a tenant for life who is a reckless spender and who soon proceeds to mortgage his life interest, a process which rarely benefits the borrower, as he soon finds himself crippled with having to find the interest in addition to a possible heavy insurance premium in respect of a policy issued to repay the loan on the death of the tenant for life, when, of course, his interest in the property ceases.

It is now rendered easily possible to prevent such dealings by giving the property to trustees on "protective trusts" for the tenant for life. A statutory meaning has been placed on this clause, which is shortly this: The trustees will pay the income to the person entitled until he becomes bankrupt or attempts to mortgage his interest, when his title ceases, and the trustees then have a discretionary power to pay or advance the income for his or her benefit, and for the benefit of his or her wife or husband and children (if any) as the trustees think most advantageous. If there is no husband, or wife, or children, to

take an interest in the funds, then the trustees may pay or advance to the person who endeavoured to mortgage and the person or persons who will become interested after his death.

Finally, it may be mentioned that it is possible to make a will without disposing of your property. This may seem strange. If, however, you are satisfied with the mode of distribution provided by statute for persons who die without a will, you can just appoint an executor who will be obliged to deal with your property according to those statutes in the event of there being no contrary instructions. This would obviate the necessity of an administration bond with the sureties.

In conclusion, there is one other matter of importance to which I will refer. If you are giving your residuary estate to several persons, it is advisable to make it clear whether you intend them to take as joint tenants or as tenants in common. In the first case, if one dies in your lifetime, his share would be divided amongst the others, but in the case of tenants in common (i.e. where the property is given to the legatees in equal shares) if either should die in your lifetime (not being a child to whom the share has been given by name) that share would lapse and there would be an intestacy in respect of it.

CHAPTER IV

HOW TO PROVE A WILL, AND THE DUTIES OF EXECUTORS

THE first duty of an executor is generally said to be to bury the deceased in a manner suitable to his or her station in life, but I think as a preliminary to this it is usual to look for the will to see if it contains any directions regarding the funeral, as is often the case.

It is an ancient custom—which I believe is still observed in some places—to have a formal reading of the will to the family after the funeral. This is a relic of old days, when it was performed with some pomp, and had a more appropriate purpose then. There were no death duties to be provided for, and the reading might be consummated by the handing over of the articles to the legatee to whom they were bequeathed.

This handing over is no longer practicable, because it is the duty of the executor to ascertain the nature and extent of the estate and to value it. First, it may be mentioned that an executor is under no legal liability to act, but if he does not wish to do so, he can be called on to sign a formal renunciation, which he must do

without in any way meddling with the estate. This is the form of the renunciation—

In the High Court of Justice
Probate Division

The.....Registry

In the Goods of A B deceased

Whereas A B of Blankham deceased died on the 1st day of February 1926 at Blankham having made and duly executed his last will and testament bearing date the 1st day of August 1925 and thereof appointed me the undersigned C D Executor

Now I the said C D do hereby declare that I have not intermeddled in the estate of the said deceased and will not hereafter intermeddle therein with intent to defraud creditors and I do hereby renounce all my right and title to the Probate and execution of the said Will

Signed by the said C D this 8th day of February 1926 in the presence of } C D

This renunciation would have to be lodged with the other papers in the Probate Court.

Assuming, however, the executor is willing to act, he must take charge of all the effects. No one, not even the widow, is entitled to remove anything without the consent of the executor.

Obtaining Probate.

It is generally advisable for an executor to employ a solicitor to take out probate for him, as he is entitled to pay the costs out of the estate.

If, however, the estate is a small one, he can perform the work himself. To do this will occasion one visit, and probably two, to the Probate Registry for the district in which the deceased had a fixed place of abode. All wills can, however, be proved in the Principal Registry in London. Where the gross estate is not worth more than £500, probate can be obtained through any Excise and Customs Office, one of which will be found in towns of any size. An appointment should be made by letter if it is desired to prove through the Customs Office, but in thecase of a Probate Registry, attendance can be made there at any time during office hours.

The executor who is not consulting a solicitor should go to the Customs Office or the Probate Court armed with a death certificate and, so far as possible, the particulars which I will mention. The officer in charge will fill in the papers, and it may be necessary for the executor to attend on some other day to complete the matter. He will have to pay the estate duty, which, if the gross estate is not more than £300, will be 30s.; or if exceeding £300 and not more than £500, will be 50s.; and he will also have to pay the court fees of about 15s.

It may be mentioned here that the executor should also take the earliest opportunity of

3—(6090)

terminating the tenancy of the house in which the testator died, if it was not his own property.

Now as to the particulars required for the Probate Court. The executor must put a value on all the furniture and effects of the deceased: an estimate will suffice in the case of a small estate. If the executor does not feel capable of forming an estimate, he can call in a valuer. The executor must ascertain what cash there is in the house and take charge of it, though he will be justified in allowing the widow any for immediate purposes. He must also ascertain what money there is at the bank and whether they hold any securities for the deceased. He should also ascertain whether there is any evidence of any securities in the house. All these will have to be valued. Stocks and shares are valued according to the market value of the day on which the deceased died. If this happened to be a Sunday or a Bank Holiday, the previous day's prices will suffice. The rules say the price must be a "quarter up" from the lowest to the highest price. Let us suppose we have £300 War Stock and the price quoted is 100–102; this would have to be taken at 100½, so that the value of our stock would be carried in at £301 10s. Sometimes the prices given are stated to be x.d., and in such a case we should have to add the

amount of the dividend to the estate, because ex dividend means that if we sold the stock, we should receive the dividend then becoming due. All other prices include a proportion of the dividend. If our price above had been marked x.d., we should have to add £7 10s. as the half-year's dividend on the War Stock. The executors must also ascertain whether any debts are due to the testator or any rents of property he may have owned. He will, of course, have to value the property itself (if any). Here, again, he would be entitled to call in a valuer, but in this case it is often easy to estimate it from what similar property has realized in the neighbourhood. Indeed, at the present time, it seems of little use to have a valuer, because the final word as to price rests with the local district valuer (who is a remnant of Mr. Lloyd George's establishment for land values). If the valuer puts on a ridiculous figure, then a valuer might be called in to contest the point.

If the estate does not exceed £500, there is no need to trouble about the debts owing by the deceased for probate purposes, but if the estate exceeds this sum, it is advisable to get a full schedule of the debts which can be carried in as deductions against the amount of death duty. In that case, it is usual, unless the family know

the deceased's habits and can say what debts are owing, to issue a short advertisement in a local paper, thus—

John Cox deceased

ALL persons having any claims or demands against the Estate of the above late of 1 Small Street Bristol are requested to forthwith send particulars thereof to the undersigned Executor

W. Smith
2 Long Street
Bristol

If the deceased was a tradesman, it is usual to add at the end of the advertisement before the signature: "And all persons indebted to the said Estate are requested to pay the amount of their liabilities to the undersigned."

When all the above information has been ascertained, it will have to be embodied in an Inland Revenue affidavit, which will be prepared in the Court or Customs Office, as the case may be, where also a further affidavit, called the "Executor's Oath," will be prepared, and which the executor will have to swear to and also to identify the will by signing it at the top or in the margin. As all these papers will be prepared by the solicitor, if any, or in the court, it is unnecessary to give any further particulars of the forms here.

A probate will never be granted under seven days

from the death, and letters of administration will not be issued under fourteen days from the death.

It is not advisable for an executor to part with any of the goods or pay any of the debts before he has got his probate, in case the will should be contested in any way or not found to be in order by the court.

Executors and Administrators.

If an executor refuses to act, probate would be granted to the other executor if there were two appointed and, if desired, power could be reserved for the other executor to prove later ; or if only one was appointed, and he renounces, administration with the will annexed will be granted to the residuary legatee. This grant is called a grant of administration *cum testamento annexo.*

Where a person dies without a will, or intestate, a bond will be required as mentioned in the last chapter, and the letters of administration will be granted to persons in the following order : that is to say, a husband or wife would have to renounce before a child would be entitled to a grant, and so on. A grant cannot be made to more than four persons.

1. Husband or wife.

2. Children or grandchildren (children preferred).

3. Father and mother.

4. Brothers and sisters of whole blood, or their issue (brothers and sisters preferred).

5. Brothers and sisters of half-blood or their issue (with similar preference).

6. Grandparents.

7. Uncles and aunts, those of whole blood being preferred.

The chief distinction between an executor and an administrator is that the former gets his authority from the will and the latter from the Probate Court. Consequently the former would be at liberty to carry out any of the directions in the will before obtaining probate, but an administrator can do nothing, and, in fact, does not exist officially, until the grant of administration has been actually granted. An executor can make a binding contract to sell property before he has probate, but no one need pay for it until probate has been issued. Another feature of the recent Act (the Administration of Estates Act, 1925) is that in the case of administration the legal estate in landed property vests in the President of the Probate Court from the time of the owner's death until the grant of administration has been issued, but the executor takes his estate under the will. The idea of vesting it in the President of the Probate Court is that now the legal estate in

property must not be held in undivided shares, though real property is divisible, so far as the beneficial interest is concerned, in the same way as the personal property.

Further, on the death of an administrator before the estate has been fully administered, a further grant would have to be taken out by the person next entitled to complete this, but an executor's office may endure for all time provided that each executor, or the survivor in the case of two joint executors, appoints an executor of his will. This chain of representation can continue until it is broken by—

1. An intestacy arising, or
2. An executor failing to appoint an executor, or
3. An executor failing to obtain probate.

Though the office of executor nominally ceases when the estate has been divided, or when the office resolves itself into the office of trustee (as I will show later), the office is always liable to be resurrected by the accretion of further funds to the estate.

Duties and Rates.

The estate duty on personal property must always be paid on the papers being lodged for probate, but the payment of estate duty on real

property can be deferred for twelve months, and it can be paid by eight yearly or sixteen half-yearly instalments. If, however, the property is sold, the whole duty becomes immediately payable.

It is the usual practice for the executor, where the estate duty is of an appreciable amount, to make an arrangement with the deceased's banker to temporarily advance the sum. The bank will always do this on the understanding, of course, the account of the executor will be kept with them.

The rates of estate duty are shown on page 65.

In the case of legacy and succession duty, if the person succeeds to the income only for life, the duty is paid on the value of the life interest and not on the value of the property itself.

A legatee or successor whose spouse is of nearer relationship to the testator may pay at the lower rate. Relations of the spouse of the testator, however, are chargeable as " strangers in blood " (i.e. the full 10 per cent).

We have often heard the cry of the impoverishment of estate owners by the increasing burden of death duties, and it may be of interest to say a few words on that subject.

Death duties were first imposed nearly 200 years ago in the form of legacy duty, which was

a charge, not on what a man left, but on what a person got, and it was charged only on personal property. Land, the immovable asset, went scot free until the year 1853, when the first Succession Duty Act was passed, but the duty then imposed was a mere bagatelle to what it is to-day.

Estate duty was first introduced in 1894, and is charged equally on real and personal property. But the rates have considerably increased since its first introduction. In 1894 the highest rate was 8 per cent; now it is 40 per cent, but that is not so material, as millionaires should be able to pay. But let us take a more moderate estate of, say, £25,000. In 1894 that would be liable for a total payment of £1,000; now, however, the same estate would be liable for £2,250.

Estate duty is a charge on real property, but all other property, except property appointed under a general power, gets the duty paid out of the residuary personalty estate, if there is sufficient. So that if you were left a freehold house worth £4,000, you will be liable to pay the estate duty on it, and if it were left to you by a person who had been a millionaire, you would have to pay, perhaps, as much as £1,600, as the property is all "aggregated together" and liable to the same rate. If, in addition, you were no relative

of the millionaire, you would have the pleasure of paying an additional sum of £240, being 10 per cent on the £2,400 remaining after the payment of the estate duty, for succession duty, so that practically you would have only half the gift. On the other hand, if the millionaire had left you £4,000 as a legacy, you would at the most have had to pay only £400 for succession or, rather, legacy duty, as the residuary estate would have had to bear the £1,600 estate duty attributable to your £4,000.

The reason of this inequality is that when the Estate Duty Act was passed in 1894, real property never "passed to" or came under the control of the executor, and estate duty is charged on the property which comes to the executor "as such" (i.e. as executor). It was not until the Act of 1897 (the Land Transfer Act) that real property came under the control of the personal representative. Prior to that time it was not necessary to prove a will which related entirely to real property. The reason why property appointed under a "general power" has to bear its own duty is that such funds do not pass under the will to the executor, but the estate is in the hands of the trustees of the fund, who are responsible to see to the payment of the duty out of the fund before parting with it.

SCALE OF ESTATE DUTY

WHERE THE DECEASED DIED ON OR AFTER THE 30TH JUNE, 1925

Principal Value of Estate			*Rate per Cent of Duty*
Exceeding	£100 and not exceeding	£500[1]	1
,,	£500	,, £1,000	2
,,	£1,000	,, £5,000	3
,,	£5,000	,, £10,000	4
,,	£10,000	,, £12,500	5
,,	£12,500	,, £15,000	6
,,	£15,000	,, £18,000	7
,,	£18,000	,, £21,000	8
,,	£21,000	,, £25,000	9
,,	£25,000	,, £30,000	10
,,	£30,000	,, £35,000	11
,,	£35,000	,, £40,000	12
,,	£40,000	,, £45,000	13
,,	£45,000	,, £50,000	14
,,	£50,000	,, £55,000	15
,,	£55,000	,, £65,000	16
,,	£65,000	,, £75,000	17
,,	£75,000	,, £85,000	18
,,	£85,000	,, £100,000	19
,,	£100,000	,, £120,000	20
,,	£120,000	,, £140,000	21
,,	£140,000	,, £170,000	22
,,	£170,000	,, £200,000	23
,,	£200,000	,, £250,000	24
,,	£250,000	,, £325,000	25
,,	£325,000	,, £400,000	26
,,	£400,000	,, £500,000	27
,,	£500,000	,, £750,000	28
,,	£750,000	,, £1,000,000	29
,,	£1,000,000	,, £1,250,000	30
,,	£1,250,000	,, £1,500,000	32
,,	£1,500,000	,, £2,000,000	35
,,	£2,000,000		40

LEGACY OR SUCCESSION DUTY

In the case of a lineal descendant, the rate is 1 per cent.

(This includes a father or grandfather, mother or grandmother.)

In the case of a brother or a sister and their descendants 5 %

In all other cases . . . . . 10 %

[1] If the gross estate does not exceed £300, a fixed duty of 30s. may be paid. If it does not exceed £500, a fixed duty of 50s. may be paid.

The estate duty is not always borne equally by the persons benefiting under a will. Suppose £5,000 personal estate or cash is being distributed under a will where £1,000 has been left to four persons equally and the rest is left to another person. In the absence of any provisions about the payment of the estate duty, the last-mentioned person would have to bear it all, so that his share would be diminished by £150 on that account, and he would also have to bear all the debts and costs. On the other hand, if the same sum was being distributed under a marriage settlement trust, all the duty and costs would first be paid and then the balance of the fund equally distributed amongst the five.

There is one useful provision as regards estate duty which minimizes the anxiety when the estate is valued at a figure bordering on that which makes it liable to a higher rate of duty. If the estate worked out at £5,010 for instance, but for this provision, it would be liable to the 4 per cent rate and would have to pay just over £200. The provision referred to, however, provides in such a case that where an estate slightly exceeds the value, which is subject to a lower rate, the excess value may be surrendered in satisfaction for the duty, so that in the instance quoted above, we could pay £150, being 3 per cent on the £5,000

plus the extra £10, making a total payment of £160.

The 1 per cent succession duty or legacy duty does not become payable where the total estate is under £15,000, or where the interest of any child or other person liable at that rate does not exceed £2,000.

In the case of a settlement fund becoming distributable between the years 1896 to 1914, or in cases where under a will proved in those years the property was settled on persons in succession, a further estate duty was payable at the rate of 1 per cent, called "Settlement Estate Duty"; and when this was paid, no further duty was to be payable until the property was freed from the settlement by someone becoming entitled to dispose of it. This duty was abolished in 1914, and it was then provided that estate duty at the full rate must be paid on each separate succession under the settlement, with the single exception that if the party succeeding was the husband or wife of the person who settled the property. On the first occasion on which the duty becomes payable, however, credit will be given for any settlement estate duty paid.

A further concession in the matter of estate duty has also been made in the case of "quick successions" (i.e. where a person succeeding to

an estate dies shortly afterwards, necessitating a further payment of estate duty). This, however, applies only in the case of land or a business (not being a business carried on by a company), or an interest in same, and is to the following extent: If in the first year after the first death, 50 per cent; in the second year, 40 per cent; in the third year, 30 per cent; in the fourth year, 20 per cent; and in the fifth year, 10 per cent; but if the second succession is more than five years after the first, no rebate is allowed.

Newspaper Account of Wills.

We are all familiar with the accounts of wills in the public newspapers. These do not form any authentic basis as to a man's real worth at the time of the death. It is customary to state a man has left so much gross and so much net personalty. In estimating the gross, however, no allowance is made for mortgages which may be on the real estate. A man may leave real estate of the gross value of £10,000, but there may be £8,000 mortgage on it, which would not appear in the paper. Indeed, I once knew a case where, judging from the paper account, a young man had died worth about £120,000, whereas, in fact, he was insolvent! The £120,000 represented the value of the estate he would have inherited

had he survived his father, and had that estate been free of mortgages, which it was not.

I should here like to correct a common error of pronunciation. If is amongst laymen a common thing to pronounce *personalty* as if there were an "i" in the word, as "personality." The word is, however, "personal-ty," with the accent on the first syllable.

Procedure when Probate Obtained.

Having obtained probate or letters of administration, the first thing to do is to register it at the bank to get the balance of the deceased's account transferred into a new account, which should be at once opened in the executor's or administrator's name. It is advisable that all dealings with the estate should be made through this account, because if the estate is of any appreciable size it will greatly facilitate the keeping of the necessary accounts. The probate will then have to be exhibited to every company in which the deceased held stock or shares. It is usual, also, to send the certificate of such stock or shares to be endorsed into the name of the executor or administrator. The usual fee for registration is 2s. 6d. Various companies have different forms to be filled up and signed before the probate is returned, and in some cases it may be the deceased

was registered at a different address or his or her name not accurately spelled, when a declaration of identity may be called for. This may have to be made by some disinterested person who knew the deceased.

It will thus be realized that where the estate is a fairly large one, and the assets are spread over a lot of companies, a good deal of time may be taken up before the executor gets all the estate under his own control. An executor or administrator is allowed a year by law to complete his administrative work, but he need not take all this time. Indeed, in small estates there is no reason why the matter may not be accomplished in about three months.

If, therefore, you hear one day you have been left a legacy by a will, do not be alarmed if the postman does not bring it to you for a few months. If payment is postponed longer than a year, you will be able to call for interest from the expiration of the year. Your right to recover the legacy by action will last for twelve years.

The executors will also have to provide the necessary cash for the payment of the funeral and testamentary expenses, and debts and legacies, for which purpose they may have to sell out some portion of the estate. They must not sell any stock specifically bequeathed if there is sufficient

general estate. Personal chattels must not be sold unless there is a special reason for so doing. If personal articles are bequeathed to persons under 21, the personal representative (that is the correct description of an executor or administrator) is at liberty to hand them over to the legatee.

In the event of the testator having been too generous and made more provisions than his estate is sufficient to meet, the legacies will have to "abate"; that is to say, they must be lessened in proportion to their amount. The precise order in which the estate has to be dealt has now been fixed by the Administration of Estates Act, 1925, as follows—

1. Property of the testator which he has not disposed of by his will, subject to the retention thereout of a fund sufficient to pay debts and legacies.

2. Property not specifically devised or bequeathed, including any residuary gift, subject to the retention of sufficient sum for debts or legacies not provided for out of 1.

3. Property specifically appropriated or devised or bequeathed for the payment of debts.

4. Property charged with or devised or bequeathed subject to and charged with the payment of debts.

6—(6090)

5. The fund (if any) retained to meet pecuniary legacies.

6. Property specifically devised or bequeathed rateably according to value.

7. Property appointed under a general power, including the statutory power of disposing of an entailed interest rateably according to value.

If the estate is an insolvent one, the funeral and testamentary expenses are to have priority, and, subject thereto, the estate should be administered on the same lines as a bankrupt's estate is dealt with.

It is hoped that if you are endeavouring to administer the estate personally without the help of a solicitor, you may have sufficient for all. If not, and you have the least doubt as to the correct interpretation of the above, do not hesitate to get legal advice before you part with the funds, as you would do so at your peril, and be liable to replace any misapplied or paid to the wrong person.

Real Estate.

Prior to 1926, if any real or leasehold property had been left to you by a will, it would have been sufficient if the executor had allowed you to take possession. By this, I do not mean to say that you must have had " vacant " possession of the

property, for, according to law, "possession" means the receipt of the rents and profits of any property. You will, of course, have to take subject to any existing tenancy, but to be in possession means that you can exercise acts of ownership.

Since the 1st January, 1926, however, your title must be evidenced in writing. Subject to your providing for the payment of the estate duty, if it is real property (if it is leasehold it will be paid out of the general residuary estate) the executor is obliged to give you either a conveyance or an assent. Either document is equally effective, but the former will require a 10s. stamp and the latter no stamp at all. Please remember, however, the executor can sell the property if he has not sufficient otherwise to pay the debts, etc. It is not enough for you to say, "That house was left to me." It is a well-known axiom that a man must be just before he is generous, and this applies equally after the man's death. The following is the form of assent you can require. I do not give a form of conveyance that would have to be prepared by a solicitor.

I William Brown of 2 Hyde Park Road Bristol as the personal representative of John Brown of 1 Hyde Park Road aforesaid hereby assent to the vesting in George Brown of 1 Hyde Park Road aforesaid of ALL

THAT freehold property known as 1 Hyde Park Road aforesaid for an estate in fee simple
Dated this 10th August 1927

Witness to the signature of the said William Brown } William Brown

John Box
4 Small Street
Bristol

A witness is not absolutely essential, but it would be better to have one in case William Brown's signature was disputed at any time. This assent should be carefully preserved, for it is of equal value to a title deed.

The person acquiring such a property is entitled to ask for a memorandum of such a conveyance or assent to be endorsed on the probate. This should be done, and it is then a notice to anyone inspecting the probate that you are the owner of the property.

Different Kinds of Legacies.

There are three kinds of legacies: (1) general, (2) specific, and (3) demonstrative, and each of these have certain peculiar and distinctive characteristics. A general legacy may be said to be just a legacy, an unconditional legacy; but this, as you may have noted before, as I hope you have, is liable to abate before a specific legacy. Further,

unless you are also a child or lineal descendant of the testator, you are not entitled to interest on a general legacy for a period of twelve months after the death, unless, of course, the personal representative has finished his administration earlier and handed over the cash for you to invest.

Do not be too eager to " plump " for a " specific legacy," for whilst it has two advantages, it has one disadvantage, which, when it happens, is disastrous. A specific legacy has the advantage that it does not abate, when cash is scarce, until all the general legacies have been lost or spent for debts, etc. It also has this advantage, that it carries interest from the date of death. So that if you are left a £1,000 War Bond, and a half-year's interest was due the day after the death, you would take all that with your legacy. Now for the disadvantage. Suppose you were left the £1,000 War Bond, and the testator had sold it and bought Consols or anything else, your legacy would be said to have been " adeemed," and you would get nothing !

A " demonstrative " legacy is a gift of a general nature, but it is primarily payable out of some particular fund, and has one advantage over a " specific " legacy and a general legacy, for whilst it is payable out of a particular fund, if that exists,

yet, if that particular fund is not in existence at the testator's death, the demonstrative legacy is not stated to be "adeemed" (literally "taken away"), but it is payable out of the general assets of the deceased. This is a sample of a demonstrative legacy: "I give to my brother William the sum of £300 payable out of my Great Western Railway Stock." If that stock has been sold by the testator before his death, the £300 will come out of the general residuary estate, and in priority to the other general legacies.

So that, on the whole, I think you will agree with me that the latter kind of legacy—the "demonstrative" legacy—enjoys the greatest advantages of the three.

Difficulties in Construction.

To attempt to relate, however briefly, all the cases which have come before the court on such apparently simple questions as to whether a comma means to affect the sense of a particular paragraph in a will (it is usual and advisable to put no stops)—or whether "and" may be read for "but," would require a book ten times the volume of this. There is, however, a certain classification of cases of frequent occurrence where testators have given property to someone and stated "if that person dies" the property is to

go to someone else. In such cases, it is hard to tell when the death is meant (i.e. is it before the testator's death or does it mean death at any time?).

The rules of construction now in force have grouped such cases under four headings, with the following results—

Case	*Decision*
(1) Gift to A and, if he shall die, to B.	(1) Death in testator's lifetime.
(2) Gift to A and, if he shall die without children, to B.	(2) Death at any time.
(3) Gift to X for life, with the residue to A and, if he die, to B.	(3) Death before X, the tenant for life.
(4) Gift to X for life, with the residue to A and, if he shall die without children, to B.	(4) Death at any time.

Unless the language is very clear and unmistakable, and incapable of being read in two ways, it would be a foolish thing for a layman to undertake to interpret a will. There have been literally hundreds of decisions by the court, and it may be the very point which is dubious in your case has been adjudicated upon. Should you misinterpret the will, it may be some years afterwards you will be called upon to restore a payment you have made to a wrong person. You must bear in mind that when a decision has been made by a judge under certain circumstances—

however inequitable or unjust it may seem to an untrained mind—that decision is the law of the land until it is overruled by another judge. Besides the law which is made up of Acts of Parliament, there is an enormous quantity of law which is commonly called " Case Law," being a quantity of decisions from time to time made in the courts and reported in the various law journals.

Final Steps in the Administration.

Having collected all the estate of the testator or intestate, and having paid all his debts and legacies, if the estate was sworn at over £1,000 net, the executor will be called on to render a residuary account. For this purpose, it is necessary for him to have kept an accurate account, for he will have to show of what the estate consisted at the time of the death, what he has done with it, and what remains. It will also be necessary to show what rent, dividends, or interest has been received and what payments made thereout, and what has been realized by any stocks sold. Legacy duty will be payable on the balance. This account is rendered on the appropriate account (No. 3), obtainable at any post office ; but as I do not suppose any novice is likely to try his hand at this, it is not necessary to enlarge

on the subject here. Of course, if the net estate was under £15,000 and it passes to lineal descendants, no residuary account will be required.

Unless the deceased's affairs are well known to the executor or the family, and there is no probability of further claims being raised, the executor may, after payment of the residuary duty (if any), be in a position to divide the estate. If, however, he has any suspicion of the possibility of any further claims arising, or that any other person may claim to share in the estate (in the case of an intestacy), he may think it wise to adopt the only course which will give him statutory protection, by inserting what is technically known as the "Statutory Notice to Creditors." This must be inserted in the *London Gazette* and in a newspaper circulating in the district where the deceased lived, and should give two months' notice of the personal representative's intention to divide the estate. When this time has elapsed, he can immediately divide up the estate, and will not, under any circumstances, be liable to any person who has not sent in notice of his claim in accordance with the provisions of the notice. As the notice is an important document, I will set out a full sample of it. It is not usual to insert this until the bills sent in after the death have been disposed of.

RE JOHN BROWN DECEASED

Pursuant to the Trustee Act 1925

ALL persons having claims against the Estate of John Brown late of 1 Hyde Park Road Bristol (who died on the 1st day of February 1926 and whose Will was proved in the Bristol District Registry on the 10th March 1926 by William Brown and John Smith the Executors) are requested to send particulars thereof in writing to the undersigned on or before the 1st December 1926 after which date the Executors will proceed to distribute the assets having regard only to claims of which they shall then have had notice

Dated this 30th day of September 1926

JONES & SONS
Bristol
Solicitors for the Executors

It is not always practicable to complete the trusts of the will at this period, for there may be property held in trust for infant children. The executor will have noticed that he has power to set aside a portion of the testator's property for this purpose, if the trust legacy is not already a specific one, but he must take care that the legacy is invested in some securities authorized by law or by the will. Having done this, if he feels he has done enough and would like to retire, it is possible for him to do so if he will appoint two trustees—or the Public Trustee or the bank, if

he likes—and vest the trust property in such trustees.

He may then gracefully retire. If he continues to carry on and is a sole trustee, it is advisable for him to appoint another trustee to act with him, and henceforth he will be a " trustee " and not an " executor." If it should happen that after this any further funds come to the estate from any unexpected source, the trustee may assume his executorial capacity and accept the same, but could then (if the circumstances permitted) request the funds to be paid direct to the trustees, unless they are immediately distributable, when he would carry out this task.

Further Facts in Reference to Wills.

If any person is interested in a will either pecuniarily, or merely from curiosity, it is always practicable for him or her to inspect the probate in the registry where the will has been proved, and in all cases in the Principal Registry at Somerset House, on payment of 1s., which small fee will cover a search for five years. It is not permissible for a person to copy a will, but a copy can be obtained at a small price, which varies according to the length of a will, or an extract of any particular portion can be obtained.

When once a will has been lodged in the Probate

Court, it will not under any circumstances be handed out again, except that it should become necessary to have any affidavit to which the will is an exhibit, or the will should be disputed and required to be produced in court. After probate has been granted, all wills are neatly written in a book kept in the registry; and it is the book copy, not the original will, which is open to inspection.

If a person has grave doubts as to the authenticity of the will, or believes the same was obtained under undue influence, or is prepared to contest the will on the ground that the testator was not of the mental capacity to understand it, such person should consult a solicitor, who can delay the issue of the probate by lodging a "caveat" in the court. This word literally means "warning" or "beware." A caveat can be entered in the registry where the papers have been lodged, or in the Principal Probate Registry, by filling up the requisite form and paying a fee of 2s. 6d. No probate or letters of administration can be issued whilst the caveat is in force. Should the caveator (i.e. the person who has lodged the caveat) not feel inclined to proceed further with his or her objection, such person may withdraw the caveat on payment of a further 2s. 6d. If the executor or administrator wishes to proceed,

he must " warn off " the caveat. For this purpose, the necessary " warning " must be obtained from the Principal Registry in London and served upon the person who has lodged the caveat, or his or her solicitor. The effect of the warning is that, unless the caveator withdraws the caveat or " enters an appearance " within the time specified in the warning, the probate or letters of administration will be issued. At the expiration of the time a search should be made to see whether the caveat has been withdrawn (or " subducted " is the technical name) or whether an appearance has been entered. If neither is found to be the case, an affidavit has to be filed proving the service of the warning and the result of the search, and then the probate or letters of administration will be duly issued.

If, however, an appearance has been entered, this will mean that the will must be proved in " solemn form " (i.e. before a judge in Chancery).

Special Executors.

Where land has been settled by the testator in his lifetime, or where the testator was the tenant for life of any settled land and there are trustees of the settlement for the purposes of the Settled Land Act, the testator will be " deemed " to have appointed such trustees his special executors in

respect of such land, and they may apply for and obtain a special probate of the will limited to such settled land. This, however, is a subject so involved in technicalities, which would interest no one but a lawyer, that it is unnecessary to deal with the matter here.

CHAPTER V

OTHER TESTAMENTARY DOCUMENTS

THERE are three classes of documents which I have kept to the last, because, although the first is a will, it is not likely to be prepared in a place where there is access to a book of reference, and the others, though of a testamentary nature, are not wills in the usual sense of the term.

Soldiers' and Sailors' Wills.

Any soldier *on active military service*, or any seaman *being at sea*, not under the age of 14, can dispose of his personal property by will. If such will is in writing, no formalities are required; indeed, it may be made by an oral statement of what his wishes are with respect to his effects after his death. To uphold the latter in a court of law, it will be necessary to give the purport of the statement and to prove that it was intended to take effect as a will.

There are, however, some modifications to this general statement. By the Navy and Marine (Wills) Act, 1865, which applies only to petty officers or seamen, non-commissioned officers of marines, or marines or other persons forming part

in any capacity of the complement of any of His Majesty's vessels, or otherwise belonging to His Majesty's Naval or Marine Forces (exclusive of commissioned warrant or subordinate officers, assistant engineers and *kroomen*), the short effect of which is that a will made previously to entering into the service shall not be valid to pass any wages, prize money, bounty money, grant, or other allowance or money payable by the Admiralty, or any effects or money in charge of the Admiralty. A will made by any person whilst serving as a seaman or marine shall not be valid for any purpose if it is written or contained on or in the same paper or instrument with a power of attorney. These are the formalities required: The will must be in writing and be executed according to the formalities required by the English law in the case of persons not being soldiers on actual military service or mariners at sea. Where the will is made on board of one of H.M.'s ships, there must be two attesting witnesses, one of whom must be a C.O., chaplain, or warrant or subordinate officer belonging to H.M.'s Naval or Marine or Military Force. If the will is not made on board ship, in addition to the above-mentioned persons, either of the following will do for a witness—the governor, agent, physician, surgeon, assistant-surgeon, or chaplain of a naval hospital

at home or abroad ; or a justice of the peace ; or the incumbent, curate, or minister of a church or a place of worship in the parish where the will is executed ; or a British consular officer ; or an officer of customs or a notary public.

Donatio Mortis Causa.

This means a gift made in consequence of the approach of death. If a person anticipating his early death hands over any property to another person subject to the condition that the gift must take effect only in the event of the death of the giver, and must be returned to him if he recover from his illness, such a gift is a good disposition of the property. The essential features of such a gift are that there must be an absolute delivery of the gift to the donee, or someone on his behalf, and in trust for him, and possession must be retained to the time of the donor's death. An oral gift without delivery is not effective. On the other hand, the gift must be returned to the donor at any time on request. Whilst the giver is alive the gift is inchoate or incomplete, and the holder of the gift is a trustee ; the gift can be consummated or completed only by the death of the donor.

Such a gift is on the same footing as a legacy, and is liable to be defeated if the donor's estate

is insufficient to meet his debts, and the gift is also liable to the payment of estate and legacy duty (if the estate is of sufficient value to warrant the latter duty). All duty would have to be borne by the receiver of the gift.

Nominations.

SAVINGS BANKS. A person over the age of 16 can, in writing, nominate any person not in the employ of the bank (unless the person so employed should be the husband, wife, father, mother, child, grandchild, brother, sister, nephew, or niece of the nominator) to receive any money not exceeding £100. The nomination should be delivered to the bank and can be revoked only in writing. On the death of the nominator, the bank will pay to the nominee.

FRIENDLY SOCIETIES, SOCIETIES UNDER THE INDUSTRIAL AND PROVIDENT SOCIETIES' ACTS, AND THE TRADE UNION ACTS. A similar provision as to nomination is provided under these Acts, and payment can be made to any nominee not under 16 years of age. Such payment would be liable to estate duty if the estate was otherwise liable. The society can call for a statutory declaration as to whether any duty is payable. Under the Acts, the society can hand over any sum not exceeding £100 without the production

of any letters of administration to the person or persons who, in the opinion of the majority of the trustees, is or are entitled by law to receive the money.

Insurance Companies. These have a similar means of nomination in respect of life insurances. No person is entitled to insure another person by way of a gamble, but an insurance can be effected to secure a loan actually made. Otherwise, the insurer must have an insurable interest in the life insured; that is to say, the person must be of near relationship, and insurance may be effected for the purposes of meeting the funeral expenses. In the case of a married man, a brother or sister, or other near relative, can have a nomination form signed by the person insured authorizing payment to such person for a reasonable amount. Such a nomination should be delivered to the company.

CHAPTER VI

IMPORTANT REMINDERS

No paper writing, even if in your own handwriting, unless it is signed by you in the presence of two witnesses and signed by them in your presence, can constitute a will.

No judge or court of law can by any means allow such to operate as a will.

An absolute or entire gift of property must not be qualified by a condition: you cannot give property to anyone, and add a direction that such person must not sell it, or that it is to be taken from such person in any event.

A gift may be for life only, followed by a gift to another: you can give the income of any money or land to one person for life and then give the money or land to another absolutely.

If such a gift is of landed property, it is far better to give it to trustees on trust for sale, and to give effect to your wishes. This gets rid of the complications under the Settled Land Act.

If you make alterations in your will after it has been signed you will create trouble, and such alterations will not take effect. If you want to

alter anything, either re-write the will or add a codicil.

A codicil must be signed in the presence of two witnesses, just as a will has to be signed.

If you make a new will, do not leave the old one about, but destroy it.

If you make a gift of anything to a person and afterwards sell it, the person will lose the benefit, even if you replace the gift by another, unless it is clear the new article is to pass.

This has been recently illustrated in the case of *Sikes re-Moxon* v. *Crossley* (reported in 1926, *Weekly Notes*, page 306). A testatrix left "my piano" to A, and afterwards sold it and bought another. Mr. Justice Clanson held that she meant the piano she had at the date of her will and that the new piano would not pass to the legatee.

A gift to your child *by name* will not lapse if the child dies and leaves a child or children, but the child or children may not get it. Your child will be considered to have died immediately after you, but the gift would pass under the child's will (if any), or possibly to the child's husband or wife, or indeed to a stranger.

APPENDIX

THE LORD CHANCELLOR'S STATUTORY WILL FORMS

1. THE Forms hereinafter contained may be cited as the "Statutory Will Forms, 1925," and are divided into two groups, called Part I and Part II respectively.

2. The Forms in Part I may be incorporated in a will by a general reference to that Part, and the Forms in Part I and Part II, or any of them, may be incorporated in a will in manner indicated in the Schedule hereto, or in any other manner indicating an intention to incorporate them, and in the case of the Forms in Part II, also indicating what property or disposition is to be affected thereby.

3. In any form when incorporated in a will:

(*a*) The provisions thereof shall have effect subject to the express provisions of the will;

(*b*) "Disposition" means a devise bequest and a testamentary disposition, whether in exercise of a general or special power, and includes a disposition under the statutory power to dispose of entailed interests by will; "dispose of" has a corresponding meaning; and references to a

testator's property include property which he disposes of in exercise of a power ;

(*c*) The trustees mean the trustees appointed by the testator, either generally or for a specific purpose, as the case may require, and the persons who by appointment by the court or otherwise become the trustees, and include his personal representatives when acting as his trustees ;

(*d*) " Authorized investments " mean investments authorized by the will creating the trust for the investment of any money subject to the trusts of the will, or by law ;

(*e*) Other words and expressions have the same meanings as in the Law of Property Act, 1925.

FORMS

PART I

Forms which may be applied either generally or by specific reference

Form 1. I confirm every settlement of property made by me which is subsisting at my death, and subject to any express provision to the contrary in my will, the provisions made by my will for the benefit of persons beneficially interested under any such settlement shall be in addition to, and not in satisfaction of those made or covenanted to be made by me in such settlement.

Form 2. (1) " Personal chattels " shall mean " carriages, horses, stable furniture and effects (not used for business purposes), motor-cars and accessories (not used for business purposes), garden effects, domestic animals, plate, plated articles, linen, china, glass, books, pictures, prints, furniture, jewellery, articles of household or personal use or ornament (including wearing apparel) ; also musical and scientific instruments and apparatus, wines, liquors, and consumable stores, but shall not include any chattels used at my death for business purposes, nor money or securities for money."

(2) But a general disposition of personal chattels shall take effect subject to any specific disposition.

Form 3. (1) An inventory of chattels given by my will, otherwise than by way of absolute gift shall be made in duplicate ; one part shall be retained by the trustees and the other part shall be delivered to the person of full age for the time being entitled to the use or possession of the chattels, in this clause called the " usufructuary."

(2) A receipt shall be signed by the usufructuary at the foot of the inventory retained by the trustees.

(3) The inventory delivered to the usufructuary shall, if he so requires, be signed at the foot thereof by the trustees.

(4) On any change of the right to the use or possession of the chattels, a new receipt shall be signed by the usufructuary at the foot of the inventory retained by the trustees.

(5) Where, by reason of the exercise of any power to sell, exchange, purchase, alter the fashion of, or otherwise deal with the chattels, or of any destruction or loss of any chattel, the inventories become inaccurate, the inventories shall be altered and re-signed, or new inventories shall, if convenient, be made and signed.

(6) The trustees may, at their discretion, exclude from an inventory any chattels which, by reason of their trifling value or wearing out nature, they may consider ought to be so excluded.

(7) Where the chattels have been delivered to the usufructuary and a receipt is given therefor, the trustees, so long as the usufructuary remains entitled to the use of the chattels, shall not be liable in any way—

(*a*) For any unauthorized disposition thereof or dealing therewith;

(*b*) To see to the insurance (so far as the same are capable of being insured), repair, or safe custody of the chattels,

unless and until required, in writing, to insure the chattels or to take any proceedings in reference thereto, by some person beneficially

interested in the chattels or by his guardian, committee or receiver, and unless also due provision be made, to the satisfaction of the trustees, for the payment of the costs of insurance or of any proceedings required to be taken.

(8) Where there is no person of full age and capacity entitled to the use of the chattels, the trustees may, during the period of disability, make such arrangements for the safe custody, repair, insurance, and use of the chattels as, having regard to the circumstances of the case, they may in their absolute discretion, think expedient.

Form 4. The receipt of the treasurer or other proper officer of a charitable, benevolent, or philanthropic institution, society, or body of persons (corporate or incorporate) to which a legacy is given by my will, shall be a complete discharge of my personal representatives.

Form 5. The following provisions shall have effect in regard to any annuities or annuity given by my will—

(1) The trustees may, and (if so requested by or on behalf of any person beneficially interested in the property affected) shall, as soon as may be after any annuity commences to accrue, set apart in their names or under their control, authorized investments to provide a fund the income whereof

will be sufficient, in the opinion of the trustees, to produce an annual sum equal to the amount of the annuities for the time being payable under my will.

(2) The income, or, if necessary, the capital of the fund so appropriated shall be applied in the payment of every subsisting annuity.

(3) Until a fund shall be so appropriated, my residuary estate shall stand charged with the payment of every subsisting annuity, but, after appropriation, the said estate shall be thereby discharged therefrom.

(4) The appropriated fund, or, where more than one annuity is bequeathed, such parts thereof as, in the opinion of the trustees, may not be required to answer any subsisting annuity, shall, on the cesser of an annuity, fall into my residuary personal estate.

(5) Accordingly, as each annuity ceases, the trustees may treat as part of my residuary personal estate, the whole or a corresponding part of the appropriated fund, as the case may require, retaining only such part thereof (if any) as may, from time to time, in their opinion, be sufficient to produce, by the income thereof, an annual sum equal to the amount of any subsisting annuities.

(6) Any surplus income of the appropriated fund shall be applied in the same manner as the income of my residuary personal estate.

(7) The trustees may, at their discretion, vary any of the investments for the time being representing the appropriated fund for other authorized investments.

(8) In this clause, "annuity" includes any periodical payment (not being a rent charge) for life or other terminable interest.

Form 6. (1) The power of appropriation conferred by the Administration of Estates Act, 1925, shall be exercisable by the trustees without any of the consents made requisite by the Act.

(2) So far as practicable, the trustees shall give one month's notice, at least, of an intended appropriation to the persons whose consent would, but for this clause, be required under that Act; but a purchaser shall not be concerned to see or inquire whether any such notices have been given.

(3) In this clause, "trustees" includes my personal representatives.

PART II

Forms which can be applied only by specific reference

Form 7. Any legacy of money or investments to which this clause is applied shall be subject to the following provisions—

(1) The trustees shall stand possessed of the legacy upon trust to invest the same in their

names or under their control in any authorized investments, with power at the like discretion to vary the investments thereof for others of a like nature.

(2) The trustees shall stand possessed of the legacy and of the investments representing the same, and all statutory accumulations (if any) of income thereof, hereinafter included in the description of such legacy upon trust to pay the income thereof to the legatee during the life of the legatee.

(3) After the death of the legatee, the capital and income of the legacy shall be held—

> In trust for all or any one or more exclusively of the other or others of the issue of the legatee whether children or remoter descendants at such times and if more than one in such shares with such provisions for maintenance education advancement and otherwise at the discretion of any person or persons and with such gifts over and generally in such manner for the benefit of such issue or some or one of them as the legatee shall by deed revocable or irrevocable or by will appoint ; but so that under any appointment a child shall not, otherwise than by way of advancement, take a vested interest except upon attaining the age of 21 years or upon marriage

and in default of and until and subject to any such appointment—

> in trust for all or any of the children or child of the legatee who attains the age of 21 years or marry under that age and if more than one in equal shares.

(4) Any child of the legatee who or whose issue takes any part of the legacy under any appointment by the legatee shall not, in the absence of any direction of the legatee to the contrary, take any share in the unappointed part without bringing the share or shares appointed to him or his issue into hotchpot and accounting for the same accordingly.

(5) If the legatee shall not have any child who, under the trusts in default of appointment hereinbefore contained, attains a vested interest in the legacy, then, subject to the trusts and powers hereinbefore expressed in favour of the legatee and his issue the legacy and the income thereof and all statutory accumulations, if any, of the income shall fall into and form part of my residuary personal estate.

(6) The legatee may, notwithstanding any of the trusts hereinbefore expressed concerning his legacy, from time to time or at any time by deed revocable or irrevocable or by will appoint to or for the benefit of any spouse who may survive the legatee during the residue of the life of such spouse or for any less period (and subject or not to any conditions and with such gifts over and discretionary or other trusts for the benefit of the spouse and issue of the legatee as the legatee may think fit) all or any part of the annual income of

the legacy of the legatee or of so much thereof as shall not, before the death of the legatee, have been paid or applied under any power affecting the same.

And upon any such appointment the trusts and powers limited to take effect after the death of the legatee shall take effect subject to the interest limited by any such appointment :

Provided that the power last aforesaid to appoint by deed shall not be exercisable by a woman while under coverture.

Form 8. Any property disposed of by my will (otherwise than in exercise of a special power) to which this clause is applied shall be subject to the following provisions—

(1) The property shall be held—

(*a*) As to the real property, if any, including chattels real, upon trust to sell the same ; and

(*b*) As to personal property, if any, upon trust to call in, sell and convert into money such part thereof as shall not consist of money.

(2) The trustees shall have power to postpone such sale and conversion for such a period as they without being liable to account may think proper.

(3) A reversionary interest shall not be sold until it falls into possession unless the trustees see special reason for sale.

(4) The trustees shall out of the net money to arise from the sale and conversion of the property (after payment of costs and out of any ready money of mine included in the disposition) pay or provide for—

(*a*) My funeral and testamentary expenses ;

(*b*) My debts except charges on other property of mine so far as those charges are discharged out of the property charged therewith under the Administration of Estates Act, 1925 ;

(*c*) The duties payable out of capital on my death and not charged on or primarily payable out of other property ;

(*d*) Any other liabilities properly payable out of the property or the proceeds of sale thereof ;

(*e*) The legacies (including money directed to be paid by my will) and annuities bequeathed by me but so that all legacies and annuities and the duty on all legacies and annuities bequeathed free of duty shall be paid primarily out of personal property, if any, included in the disposition.

(5) The trustees may invest in their names or under their control the residue of the said money or so much thereof as may not have been distributed in any authorized investments with power at their discretion to vary such investments for others of a like nature.

(6) The income (including net rents and profits of real property and chattels real after payment of rates, taxes, rent, costs of insurance and of repairs, and other outgoings properly attributable

8—(6090) 12 pp.

to income) of so much of the property as is not required for the administration purposes aforesaid shall, however the property is invested as from my death, be treated and applied as income; and for that purpose any necessary apportionment may be made between capital and income.

(7) Provided that—

(*a*) Statutory accumulations of income made during a minority or pending a contingency or accumulations made under an express trust for accumulation may be added to capital;

(*b*) Income may be applied in effecting and maintaining a leasehold sinking fund policy or may be set aside and invested for providing a fund to answer any liabilities which in the opinion of the trustees ought to be borne by income;

(*c*) The trustees may in their discretion adjust, in such manner as they shall think fit, having regard to the circumstances of the case, the incidence as between capital and income of the payments made in the course of administration.

Form 9. Any property disposed of by my will (otherwise than in exercise of a special power) to which this clause is applied shall be subject to the following provisions—

(1) The property (including the investments for the time being representing the same) shall be held upon trust to pay the income thereof to my spouse for life.

(2) After the death of my spouse, the capital and income of the property shall be held—

(*a*) In trust for all or any one or more exclusively of the other or others of my issue, whether children or remoter descendants, at such time, and if more than one in such shares with such provisions for maintenance, education, advancement and otherwise, at the discretion of any person or persons and with such gifts over and generally in such manner for the benefit of such issue or some or one of them as my spouse shall by deed revocable or irrevocable or by will appoint; but so that under any appointment a child shall not otherwise than by way of advancement take a vested interest except upon attaining the age of 21 years or upon marriage.

(*b*) And in default of and until and subject to any such appointment, in trust, in equal shares if more than one, for all or any my children or child who survives me and attain the age of 21 years or marry under that age, and for all or any of the issue living at my death who attain the age of 21 years or marry under that age of any child of mine who predeceases me, such issue to take through all degrees, according to their stocks, in equal shares if more than one, the share or shares which his or their parent would have taken if living at my death and so capable of taking.

(3) Any person who or whose issue takes any part of the property under any appointment by my spouse shall not, in the absence of any direction by my spouse to the contrary, take any share in the unappointed part without bringing the shares appointed to such person or his issue into hotchpot and accounting for the same accordingly.

Form 10. Any property disposed of by my will (otherwise than in exercise of a special power) to which this clause is applied shall be subject to the following provisions—

(1) The property, including the investments for the time being representing the same, shall be held upon trust to pay the income thereof to my spouse for life.

(2) After the death of my spouse the capital and income of the property shall be held in trust in equal shares, if more than one, for all or any my children or child who survive me and attain the age of 21 years or marry under that age, and for all or any of the issue living at my death, who attain the age of 21 years or marry under that age, of any child of mine who predeceases me such issue to take through all degrees, according to their stocks, in equal shares, if more than one, the share or shares which his or their parent would have taken if living at my death ; and so that no issue shall take whose parent is living at my death and so capable of taking.

SCHEDULE

Incorporation of all the Forms in Part I

All the forms contained in Part I of the Statutory Will Forms, 1925, are incorporated in my

will (subject to the following modifications), namely.

Incorporation of Specified Forms from Part I

The following forms contained in Part I of the Statutory Will Forms, 1925, shall be incorporated in my will.

INCORPORATION OF SPECIFIED FORMS FROM PART II

FORM 7

Trusts of a Settled Legacy

Form 7 of the Statutory Will Forms, 1925, is incorporated in my will and shall apply to the following legacies (subject to the following modifications).

FORM 8

Administration Trusts

Form 8 of the Statutory Will Forms, 1925, is incorporated in my will and shall apply to (subject to the following modifications).

8A—(6090)

FORM 9

Trusts for Spouse for Life, with Power to Issue and Gift Over to Them

Form 9 of the Statutory Will Forms, 1925, is incorporated in my will and shall apply to (subject to the following modifications).

FORM 10

Trusts for Spouse and Issue without a Power of Appointment

Form 10 of the Statutory Will Forms, 1925, is incorporated in my will and shall apply to (subject to the following modifications).

N.B.—In Forms 8, 9, and 10 the blanks are intended for a description of the property to which the clause is to apply.

INDEX

ABATEMENT of legacies, 71–74
Administration bond, 15
——, *cum testamento annexo*, 59
——, letters of, 15
—— of Estates Act, 12, 60, 71
——, order in which granted, 59
Administrator, 59 *et seq.*
Advancement of capital, 37, 41
—— of income, 40
Advertisement for debts, 58
Alterations should not be made in wills, 26
Appropriation, power of, 46
Assets, order of distribution, 71

CAVEATS, law as to, 82 *et seq.*
Codicil, 27
Committee, definition of, 21
Common errors in wills, 36 *et seq.*

DEATH duties, 61–67
—— ——, estate duty, 61
—— ——, —— ——, rate of, 63–65
—— ——, legacy duty, 63–65
—— ——, short history of, 62
Debts, advertisement for, 58–79
—— can be deducted in duty account, 57
Debts should not be paid before will proved, 59
Donatio mortis causa, 87

ENTAILED estates, 42
—— ——, will in respect of, 43
Executor and executrix—
  appointment of, 28
  can act before proving will, 60
  cannot charge for work, 29
  definition of, 33
  gift to, 29
  oath of, 58
  office endures, 61
  ——, how ended, 61
  particulars of duties, 70 *et seq.*

FORMS—
  advertisement for debts, 58
  codicil, 27
  creditors, 80
  renunciation, 27
  statutory advertisement, 54
  vesting assent, 73
  will giving all to wife, 24
  —— —— —— and children, 28
  —— in contemplation of marriage, 32
  —— of entailed property, 43
  ——, various bequests, 34
Frauds, Statute of, 6
Free of duty, meaning of, 30

GIFTS to children, effect of lapse, 39
—— ——, when lapse, 38

HEIR, gift to, how construed, 20
Hotchpot, meaning of, 48

IMPORTANT reminders, 90, 91
Inland Revenue affidavit, 58
Intestacy, changes in law, 13–17
——, hardships provided for, 21
——, old law in case of lunacy, 20
——, order in which persons take, 19
——, widow and children, 14–16
——, —— —— no children, 18

LAPSE, law as to, 33, 38, 39

Legacies, abatement, of, 71
——, demonstrative, 75, 76
——, general, 74
——, interest on, 75
——, specific, 75
Legacy duty, rates of, 62–65
Lord Chancellor's will forms, 43 *et seq.*, also Appendix
Lunatics (see under *Intestacy*)

NOMINATIONS, 88

PARTICULARS required for probate, 55
Personal effects, definition of, 14
Personalty, pronunciation of, 69
Powers of appointment, meaning of, 45, 48 *et seq.*
Probate, how to obtain, 58 *et seq.*
——, procedure after, 67 *et seq.*
——, when granted, 58
Protective trusts, 51

REAL property, now divisible as personalty, 13
Renunciation of probate, 52
——, form of, 54
Residuary account, 78
—— estate, devise of, 52

SETTLED Land Act formalities, how to evade, 31
Soldiers' and sailors' wills, 85
Special executors, 83
Statutory notice to creditors, rules as to, 79
—— —— ——, form of, 80
Stocks, how valued for probate, 56

TRADESMEN, advertisement for creditors, 58
——, how intestacy may affect, 17
Trust for sale advisable in wills, 31
Trustees, appointment of, by executors, 81
——, management by, 32

VALUATION of property for probate, 56, 57
Vesting assent, 31, 72
——, form of, 73

WILLS—
Act, 7
advisability of making, 14,
alteration after signing, 26

Wills—(*contd.*)
always revocable, 33
definition, 1
form (see *Forms*)
history, 1–10
how to make, 22 *et seq.*
—— to prove, 53 *et seq*
—— to sign, 24, 25, 34
important to destroy old wills, 26
inspection at Somerset House, 81
Wills—(*contd.*)
newspaper accounts, 68
property passing, 7
publication, 6
revocation, 9
statute of, 6
Witnesses, how to sign as, 25
—— must be present when will signed, 27
—— should be disinterested persons, 27

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